

剑桥政治思想史原著系列（影印本）

CAMBRIDGE TEXTS IN THE HISTORY OF POLITICAL THOUGHT

维多利亚政治著作选

Vitoria

Political

Writings

Edited by

ANTHONY PAGDEN

JEREMY LAWRENCE

中国政法大学出版社

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HISTORY OF POLITICAL THOUGHT

Series editors

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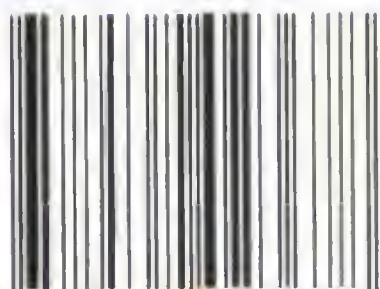
Vitoria: Political Writings

Francisco Vitoria was the earliest and arguably the most important of the Thomist political philosophers of the counter-Reformation. Not only did he write important essays on civil and ecclesiastical power, but he became celebrated for his defence of the New World Indians against the imperialism of his own master, the king of Spain.

Vitoria's political works are thus of great importance for an understanding of both the rise of modern absolutism and the debate about the emergent imperialism of the European powers. His works are also unusually accessible, since they survive mainly in the form of 'relectiones', or summaries delivered at the end of his lecture courses on law and theology at the university of Salamanca.

Translated here for the first time from the original manuscripts, these texts comprise the core of Vitoria's thought, and will be of interest to specialists in political theory and the history of ideas, ecclesiastical history, and the history of early modern Spain. A comprehensive introduction, chronology, and bibliography accompany the texts.

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FRANCISCO DE VITORIA

维多利亚政治著作选
Political Writings

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HISTORY OF POLITICAL THOUGHT



FRANCISCO DE VITORIA
Political Writings

剑桥政治思想史原著系列

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在政治理论领域，“剑桥政治思想史原著系列”作为主要的学生教科丛书，如今已牢固确立了其地位。本丛书旨在使学生能够获得从古希腊到 20 世纪初期西方政治思想史方面所有最为重要的原著。它囊括了所有著名的经典原著，但与此同时，它又扩展了传统的评价尺度，以便能够纳入范围广泛、不那么出名的作品。而在此之前，这些作品中有许多从未有过现代英文版本可资利用。只要可能，所选原著都会以完整而不删节的形式出版，其中的译作则是专门为本丛书的目的而安排。每一本书都有一个评论性的导言，加上历史年表、生平梗概、进一步阅读指南，以及必要的词汇表和原文注解。本丛书的最终目的是，为西方政治思想的整个发展脉络提供一个清晰的轮廓。

本丛书已出版著作的书目，请查阅书末。

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TO PETER RUSSELL
nostrorum sermonum candide iudex

(Horace *Ep.* I. 4)

Editors' note

The two editors were able to work together on this book on the conducive neutral ground of Oxford and in the company of Peter Russell, to whom the book is gratefully dedicated in recognition of this and many other debts incurred by both of us over many years.

We share responsibility for the finished work, but the initial division of labour was as follows: the Introduction and choice of texts were Anthony Pagden's, who also compiled the table of 'Principal events in Vitoria's life' and 'Bibliographical note'; the editing and translation of the texts were the work of Jeremy Lawrance, who also contributed the 'Critical note on texts and translation', the short critical introductions to each text, the footnote commentary, and the 'Biographical notes', glossary, list of references, and index at the end of the book. The text was subsequently revised by both editors. In particular, Anthony Pagden made numerous suggestions and corrections to the translation and notes.

Anthony Pagden would like to thank Quentin Skinner and Raymond Geuss for their comments on an earlier draft of the Introduction. He would also like to thank Ms Kate Eliot of Princeton University for allowing him to see an unpublished paper on Vitoria's conciliarism, to which his own observations on the subject are greatly indebted.

Jeremy Lawrance acknowledges with gratitude the constant help of those *Mancunienses optimi*, Dr Gordon Kinder, whose unrivalled knowledge of Holy Scripture and sixteenth-century theology saved much time and embarrassment, and Dr Joe Bergin, who kept him on the historical strait and narrow and gave him the freedom – *usucapio*, if not *merum dominium* – of his library. And above all, of course, the support of Martha, for her price is far above rubies.

Abbreviations and sigla

References to sources and modern studies in the footnotes have been given in shortened form, by author, date, and page number; full titles are given in the List of references at the end. In addition to the usual abbreviations for books of the Bible, academic journals and periodicals, and standard reference works, the following sigla have been used:

ad	response to <i>obiectum</i> (in a <i>quaestio</i>)
AV	Authorized Version
C.	Causa (from Gratian's <i>Decretum</i> , Part 2, in Richter & Friedberg 1922: I)
<i>Codex</i>	<i>Codex iustinianus</i> (in Krueger, Mommsen, Schoell & Kroll 1970–2: II)
D.	Distinctio (from Gratian's <i>Decretum</i> , Part 1, in Richter & Friedberg 1922: I)
d.a.c., d.p.c.	Gratian's ' <i>dictum</i> before the canon, after the canon'
<i>Digest</i>	<i>Digesta</i> (in Krueger, Mommsen, Schoell & Kroll 1970–2: I)
G	<i>Granatensis</i> (Granada MS)
in	commentary on
<i>in c</i>	<i>in corpore articuli</i> , in the body of the article
<i>In ST II-II</i>	Francisci de Victoria <i>Lectiones in IIam Hae Summae theologiae S. Thomae Aquinatis</i>
<i>Institutions</i>	<i>Institutiones iustinianae</i> (in Krueger, Mommsen, Schoell & Kroll 1970–2: I)
L	<i>Legionensis</i> (edition of Lyon, Vitoria 1557)
P	<i>Palentinus</i> (Palencia MS)

<i>S</i>	<i>Salmanticensis</i> (edition of Salamanca, Vitoria 1565)
<i>Sext</i>	<i>Liber Sextus Decretalium Bonifacii VIII</i> (Richter & Friedberg 1922: II)
<i>ST</i>	<i>Summa theologica</i>
<i>s.v.</i>	<i>sub uerbo</i>
<i>V</i>	<i>Valentinus</i> (Valencia MS)
<i>Vulg.</i>	Biblia Sacra Vulgata Latina
<i>X.</i>	<i>Liber Extra</i> (= <i>Decretales Gregorii IX</i> , in Richter & Friedberg 1922: II)

Introduction

1

Francisco de Vitoria was one of the most influential political theorists in sixteenth-century Catholic Europe. By profession he was a theologian, but like all theologians of the period he regarded theology as the 'mother of sciences', whose domain, as he claimed at the beginning of *On the American Indians*, covered everything governed by divine or natural, rather than human, law – everything, that is, which belonged to what we would describe as jurisprudence. Vitoria's writings covered a wide variety of topics, from the possibility of magic to the acceptability of suicide. But it is on those which deal with the most contentious juridical issues of the period – the nature of civil power and kingship, the power of the papacy, and the legitimacy of the European expansion – that his fame chiefly rests. Vitoria, who spent most of his active life as a university professor, was also the master, and master of masters, to two generations of Spanish theologians and jurists who achieved international fame. These men, from his closest associate Domingo de Soto (1494–1560) to the great Jesuit theologians and metaphysicians Luis de Molina (1535–1600) and Francisco Suárez (1548–1617), have been known variously as 'the Second Scholastic' and, more parochially, as 'the School of Salamanca'. Their learning was immense and their interests, which ranged from economic theory to the laws of motion, from eschatology to the laws of contract, practically unlimited; but it was in jurisprudence and moral philosophy that their achievements were the most far reaching. And it was to Vitoria that they owed the foundations of their common project.

At Paris, where he first studied and then taught between 1509 and 1523, Vitoria came into contact with the work of the French humanists of the fifteenth century. Vitoria later admitted that he had 'sinned as a young man by spending too much time on what Cato calls *the disciplines*

of the Greeks, that is natural science and humanities' (lectures of 1539–40 *In ST* I. 1, in Beltrán de Heredia 1928: 37). But although this may have introduced him to areas of classical learning that were closed to his predecessors, and given him a broader sense of the scope of theological speculation than they had envisaged, it is a mistake to attribute the originality of Vitoria's work, as many scholars have done, to a happy marriage of Thomism and 'Christian humanism'. Certainly he had read widely in classical literature – in both Greek and Latin, if the Valencian humanist Juan Luis Vives is to be believed – and he relied more heavily than most theologians on classical moral philosophy, in particular on the works of Seneca and Cicero. But his attitudes towards the 'new grammarians', as he called the humanists, hardened as the struggle against Lutheranism intensified, and he came to regard humanist textual scholarship on the Bible as the slippery slope which had led to Protestant heresy. He attacked Luther and Budé as 'impious heretics' for reading the Scriptures *sola grammatica* 'by grammar alone', without the aid of patristic and scholastic theology (Beltrán de Heredia 1928: 52–4), scorned the French humanist Lefèvre d'Étaples as a heretic (see *On Law* §128, p. 190, footnote 39), looked upon Erasmus as a jumped-up grammarian meddling in affairs he did not understand, and dismissed Lorenzo Valla, the founder of humanist Biblical criticism, as a charlatan. In the same vein, Vitoria once described Juan Doria, a Salamancan colleague who had been heard to defend Valla in the schools, as *somniator* 'day-dreamer' (Beltrán de Heredia 1928: 41).

The source of Vitoria's originality, and of his impact on two generations of thinkers, is to be found neither in his association with the *novi grammatici*, nor in his methods, all of which were conventionally scholastic. It is to be found instead in an attempt to create a moral philosophy which would incorporate an interpretation of the great Roman Law texts within a discourse which was primarily concerned with the natural law – the *ius naturae*.

For the Thomists, the law could be divided into four general categories. The first, in that it embraced all the others, was the divine or eternal law. This is the creative *ratio* of God himself, and was conceived by the Salamancan theologians as a set of norms or *regulae* used by God at the creation, as an architect – the simile is Domingo de Soto's – might use a set of drawings.

The natural law (*ius naturae*) was, to use Aquinas' definition, 'the participation in the eternal law by rational creatures' (*ST* I-II. 91. 2 *in c*). It was conceived as a body of self-evident first principles implanted by God at the creation 'in the hearts of men'. Thus, as Vitoria noted, the natural law was 'not an office of will, but of reason and enlightenment' (*On Law*

§121, pp. 155–7). It consisted, however, of two distinct parts. The first was constituted by what are called the ‘first principles’ (*prima praecepta*), those maxims whose force no rational being could fail to recognize, the simplest and most often quoted being the commandment: ‘Do unto others as you would have others do unto you’. These are then translated by a process known to the scholastics as *synderesis* (an approximation to Aristotle’s practical syllogism) into secondary – and if needs be tertiary, quaternary, and so on – principles which in turn provide the rational underpinnings for all codified laws (*On Law* §123–4, pp. 170–2). The process which ensured the accurate translation from one stage to the next was ‘the general consensus of men’ (*On Law* §121, p. 160). For, the argument ran, if what I and all my (Christian) fellows, as rational beings, consider to be true is not in fact so, then God, who implanted in my mind the *prima praecepta* of the natural law by which I form my understanding of the world, must be deceiving me. This is clearly unthinkable. Knowledge, therefore, must be, ‘that thing on which all men are in agreement’ (Vitoria 1932–52: III. 10). For Vitoria, as for Aquinas, the law of nature was the efficient cause which underpinned man’s relationship with the world about him and governed every practice within human society. It alone could enable the theologian to describe and explain the natural world, and man’s place within it, in wholly rationalistic terms. The truth of the Gospels and of the Decalogue, and with it the rightness of the political and social institutions of Europe as set down in the Roman law texts, could all be defended, without recourse to revelation, as the inescapable conclusions of the rational mind drawing upon certain self-evident first principles.

The human or positive law (*lex humana, civilis* or *positiva*) was constituted by those laws enacted by man. To be binding these had to be derived from one or other precept of the natural law, since they were all simply enactments in the external world (*in foro externo*) of what all men already knew in conscience (*in foro interno*). But the dictates of the human law could also, unlike the natural law, be abrogated, and since their authority derived from purely human agency they evidently varied, sometimes radically, from community to community.

Occupying a mid-way and highly ambiguous position between the natural and the positive law was the law of nations (*ius gentium*). This was the body of those laws which could be said to be what Vitoria termed a set of precepts enacted by the power of ‘the whole world, which is in a sense a commonwealth’ (*On Civil Power* 3. 4, p. 40), irrespective of the local legislative convictions, beliefs, and customs of individual communities, or indeed their place in time. For Vitoria, although not for Aquinas, this was essentially a part of the positive law

(Vitoria 1932–52: III. 89–90). It was, he said, ‘that which is not equitable of itself, but [has been established] by human statute grounded in reason’ (Vitoria 1932–52: III. 12). But the need for the *ius gentium* to be based directly upon the *prima praecepta* of the law of nature, together with the fact that it relied upon a universal consensus which made it practically impossible to abrogate (who could imagine a legislative assembly of *all* the peoples of the world?), meant that it was clearly far closer to the natural law than were the enactments of individual rulers. So close, indeed, that even non-European ‘barbarian’ societies might be subject to the *ius gentium*, whereas they could clearly be subject to no simple human law other than their own. It was Vitoria’s observations on the implications of this last argument for the legitimation of the Spanish invasion of America (*On the American Indians*) which has earned him the reputation as the ‘father’ of international law. Such a notion is anachronistic, since the concept of an ‘international law’ has its origins in the ‘modern’ natural-law theorists, notably Hugo Grotius, Samuel Pufendorf, and John Selden, whose project was very different from Vitoria’s, and wholly indifferent to the Thomist definition of *ius*. Vitoria’s account of the *ius gentium*, furthermore, occupies only a small part of his total work, and is not entirely consistent. But his concern with what he called ‘the affairs of the Indies’ and the related question of the just war placed the notion of the *ius gentium* as a form of the positive law founded upon the principles of natural justice firmly on the agenda for all his successors, from Soto to Suárez.

It was one of Vitoria’s central concerns, reiterated in *On Civil Power*, *On the Power of the Church*, *On the Law of War*, and *On the American Indians*, to reinforce Aquinas’ argument that all rights (*iura*) were natural and the consequence of God’s law, not of God’s grace. The contrasting claim, made first by the fourteenth-century English theologian John Wycliff and later by the fifteenth-century Bohemian reformer Jan Huss, and more recently and far more menacingly by what Vitoria refers to as ‘the modern heretics’, the Lutherans, made rights, and hence the authority of secular princes, dependent upon God’s grace. On this account only a godly ruler could be a just legislator. Thus, if a prince was a heretic or proved in the eyes of those who chose to judge him to be in a state of sin, his laws could not be binding in conscience (*On Civil Power* 3. 1–6, pp. 32–42), and he might legitimately be deposed. It was this which underpinned the Lutheran and later Calvinist theory of revolution, despite Luther and Calvin’s own insistence that no opposition to established authority could be justified in practice. For Vitoria, and later for the Spanish delegates at the Council of Trent Domingo de Soto and the Archbishop of Toledo Bartolomé de Carranza (also a former

pupil of Vitoria), it was vital that such a theory, with all that it implied for the effective right of lesser magistrates to make war upon their ordained princes, should be discredited. If Vitoria's work can be said to have a single unifying concern, it is with the preservation of the civil state from 'the arguments which heretics and schismatics use to dissuade or inveigle away the hearts of simple men from due obedience to their princes and their priests' (*I On the Power of the Church* 1. 2, p. 55).

2

Vitoria produced two categories of text: the lectures on Aquinas' *Summa theologiae* and on Peter Lombard's *Sentences* which he delivered during his twenty years as Prime Professor of Theology at Salamanca, and a series of *relectiones*, or 're-readings'. These latter were longer and more formal than the lectures and were also, unlike the lectures, which consisted of continuous commentaries on a set text, investigations of a particular problem. In each case this was a problem related to a tricky passage in the text discussed in that year's lecture course, but frequently also a problem of some immediate political or social significance.

Vitoria himself published nothing during his own lifetime. His students, he once said, already had too much to read. What survives of his lectures comes down to us in the form of notes taken down *uiua uoce* by his pupils; it was Vitoria himself who introduced into Spain the Parisian custom of dictating lectures at a pace suitable for copying (Beltrán de Heredia 1928: 13–26, and see the 'Critical note on texts and translation' below). Through this channel, much of Vitoria's teaching found its way into more accessible form in his star pupil Domingo de Soto's *De iustitia et iure*, first printed in Salamanca in 1553, a standard manual on rights and justice which could have been found on the shelves of every scholarly library in Europe.

The *relectiones* were delivered to an academic audience. Their purpose, as Vitoria somewhat disingenuously claimed at the beginning of *On the American Indians*, was, as with all theological discourse, 'demonstrative – that is, undertaken not to argue about the truth, but to explain it' (*On the American Indians* intro., p. 238). But they also belonged to a long tradition of ritual legitimation which the kings of Castile had, since the Middle Ages, regularly enacted when confronted by uncertain moral issues – that is to say, disputations of the kind more properly called, according to the same passage, 'deliberative' or forensic. With the defeat of the *comunero* revolt in 1521, the Castilian crown had

effectively secured the consensus of its own political nation. Unlike France, or even England, it had, therefore, no further need to assert its own legitimacy against particular or faction interests, and its principal ideological concern was instead the defence of its self-appointed, and increasingly perilous, role as the guardian of universal Christendom. The task of its theologians was to ensure that it acted, or was seen to act, on all occasions in strict accordance with Christian ethico-political principles. Thus even *On Civil Power*, which is explicitly directed against republicans and communitarians, makes no direct reference to the *comuneros* and is much more concerned with the external threats to kingship presented by Lutheranism than it is with any perceived internal menace.

3

The first of the six relections translated here, *On Civil Power*, is substantially a defence of the Castilian monarchy, and of monarchies in general, as the most perfect form of political community. Vitoria begins by stating that the self-evident purpose of all civil power is to ensure the safety and security of the members of the community. For Vitoria, as for all Thomists, societies were natural organisms. They existed both as protective bodies for a being that nature had created 'naked and unarmed like a castaway from a shipwreck' (*On Civil Power* 1. 2, p. 7), and as an expression of man's natural sociability, providing the only environment in which the unique gifts of virtue and reason with which he has been endowed and whose exercise are his final purpose – his *telos* – are at all possible.

But if men possess a natural urge to live in society, the types of political societies in which they live would seem to be of their own devising. All civil power, for Vitoria, is vested in the commonwealth (*res publica*), since, if all societies are natural organisms, it follows that no individual could have held power prior to their formation (*On Civil Power* 1. 4, p. 11). It follows, too, that if 'legislative power exists in the commonwealth by divine and natural law' the commonwealth may, and indeed, if it is to constitute a civil society where there can be only one ruler, must delegate its power and offices (*On Civil Power* 1. 5, p. 14). The person or persons to whom it delegates may of course be one or many. In the traditional Aristotelian division, with which Vitoria was familiar, there were three types of political rule, monarchy, aristocracy and timocracy (or democracy: *On Civil Power* 1. 8, p. 19 and footnote 43). Of these,

Vitoria, like Aristotle, unsurprisingly considers that 'the greatest and best of all forms of rule and magistracy is monarchy or kingship' (*On Civil Power* 1. 5, p. 12), despite his tantalizing but undeveloped statement, preserved only in the MS version of this relection, that Spain itself is a 'mixed' constitution (*On Civil Power* 1. 8, p. 21 and footnote 45). In the first instance it is necessity, the practical impossibility of direct rule by 'the multitude', which leads to, and sanctions, the initial delegation of power to 'certain men who take upon themselves the responsibilities of the commonwealth and look after the common good'. At this stage 'it is irrelevant whether this be a number of men, as in an oligarchy, or a single man, as in a monarchy' (*On Civil Power* 1. 5, p. 14). Both will serve the limited function of protection. But it is clear that monarchy, apart from being the most common form of rule – or so the historical record would suggest – and hence the most natural, is also of a different order from all others. Vitoria now commits himself to the extreme claim that, unlike aristocratic or timocratic power, 'royal power is not from the commonwealth, but from God himself' (*On Civil Power* 1. 5, p. 16). The king is, of course, crowned by the commonwealth, but this does not mean, as some have supposed, that the act of coronation confers power on the king, any more than the act of election confers power upon the pope. At this point Vitoria makes the neo-Thomist distinction between regal power and merely human authority which Hobbes was to ridicule to such good effect. 'The commonwealth', he claims, 'does not transfer to the sovereign its power (*potestas*), but simply its own authority (*auctoritas*).'

This crucial distinction between power and authority, although left largely unexamined in *On Civil Power*, is set out more clearly in Vitoria's commentary on Aquinas' discussion of civil obedience, *ST* II-II. 104. 6 (Vitoria 1932–52: V. 212–13), and in *I On the Power of the Church* 1 (p. 50). The Latin term *potestates*, he says, can be used in two senses: either to mean 'capabilities', as in expressions such as 'the powers of the senses, of the intellect, [and] of the will' (which, given Vitoria's acceptance of an Aristotelian psychology, means that they are innate), or in the different sense of 'authorities', as in expressions such as 'the powers of magistrates, priests, empires'. In this second sense, *potestas* refers only to the 'authorities or jurisdiction' which are conferred upon the magistrates, priests, and empires by the community. Royal power, then, is a 'capability' and comes from God; but since such power clearly cannot be exercised in a void, kings must receive their authority or executive power from the community. 'Power' as authority, he says more bluntly elsewhere, 'is from the people' (*On Dietary Laws, or Self-Restraint* 1. 5, p. 218). It is also obviously the case that the community

may withhold that authority since, as he later claims, the community may lawfully be punished for the sins of its monarch, as 'anyone may lawfully be condemned for the wrongdoings of his appointed agent' (*On Civil Power* 1. 9, p. 21). But the power to act on behalf of the community – what we today would call the 'high executive prerogative' of the state – can only be conferred by God. It is 'the authority or right of government over the civil community', and although the community may have chosen this king as opposed to some other, there can, Vitoria says later, be no appeal against the king to the commonwealth (*On Civil Power* 2. 1, p. 31). As power derives from God, and not from a merely human contract, 'it cannot be abolished even by the consensus of men' (*On Civil Power* 1. 7, p. 18). And once transferred, the commonwealth 'does not retain that power to itself, otherwise there has been no transfer' (*On Law* §136, p. 199; compare §137, p. 200).

To say that regal power derives from God, however, is not to affirm a divine right to rule, much less is it to propose absolute authority on the part of the monarch. For, although the king may be the executor of the positive law, legislative power itself resides with the commonwealth (*On Civil Power* 1. 4, pp. 11–12). The king may be the ultimate source of law, but he is also subject to the laws he makes, and these must always be in accordance with the customs of the commonwealth for which they are intended. The king may be 'over the whole commonwealth, [but] he is nevertheless part of the commonwealth', and he is subject to its *vis directiva* or 'guiding force' (*On Law* §126, pp. 181–2). There is, however, some doubt as to whether the king may be coerced in any way if he fails to behave like a subject. Vitoria, like his Jesuit successors, was willing to admit the possibility of tyrannicide on the grounds that 'even if the commonwealth has given away its authority, it nevertheless keeps its natural right to defend itself' (*On Law*, §137, p. 200); but he was also, in common with all early-modern political theorists on both sides of the confessional divide, reluctant to ascribe coercive, and thus potentially revolutionary, powers to any authority other than of the established ruler, whatever his conduct might be. On the one hand it is clearly legitimate for a subject to resist his king, or indeed his pontiff; on the other it remains the case that it is sacrilege for subjects to question any duly constituted authority. For Vitoria, unlike Suárez (or indeed Locke), there was no way out of this impasse. But he was certain that a ruler who fails to observe the law is as guilty of sin as any of his subjects. Indeed, 'his sin may be more serious, because he commits an offence against his subjects by burdening them with laws which he is unwilling to raise a finger to obey himself' (*On Law* §126, p. 182). Neither can the prince abolish any law which is 'useful to the common good', although in

concert with the commonwealth 'he may abrogate any law whatever' (*On Law*, §127, pp. 184–5).

This, crucially for Vitoria's later arguments about the American Indians, is true even of non-Christian communities, for to claim that royal power was restricted to Christians would, of course, be to assume 'that the true title and foundation of all power is grace', which, as we have seen, was a claim Vitoria was very eager to refute. Vitoria does not say how, or by what means, kings are invested with their power. But he does make it clear that certain communities may, if they so wish, elect a king, and that once elected this king would be in possession of the divine power of kings (*On Civil Power* 2. 1, pp. 30–1).

'Civil societies which have no sovereign and are ruled by a popular administration', says Vitoria, 'often boast of their liberty, accusing other civil societies of being the servile bondsmen of sovereigns' (*On Civil Power* 1. 8, p. 19). For Vitoria, who in common with most scholastics refused to accept the republican claim that virtue derives from participation and not protection, this was 'a stupid and ignorant idea'. For in reality 'there is no less liberty under a monarchy than under an aristocracy or timocracy'. In the first place, every individual is subject to the civil power, by whomever it is exercised; 'there is', he observed, 'clearly no greater liberty in being subject to three hundred senators than to one king'. Secondly, since the undivided nature of regal rule makes it more effective in the preservation of peace, a monarchy is in a better position to fulfil the declared 'purpose of every commonwealth and power, [which] is the sociable intercourse (*conuersatio*) and companionship of its members' (*On Civil Power* 1. 8, p. 20).

As we have seen, one of Vitoria's prime objectives was the refutation of the social theories of the 'new heretics'. This required not only a strong theory of monarchy firmly grounded in natural law, but also an equally strong, and similarly grounded, theory of papal power. For Vitoria, as for most contemporary theologians and canonists, there existed an inescapable, if also highly ambiguous, analogy between the constitution of the secular community and that of the Church. The two reflections on the power of the Church are largely concerned with the refutation of the claims of the conciliarists, and in particular of the Parisians Jean Gerson, John Mair, and Jacques Almain, whose work Vitoria had encountered during his time in Paris. For Vitoria the fundamental claim that the power of the Church 'is immediately vested in a duly constituted council' (*II On the Power of the Church* 1. 1, p. 112) seemed all too close to the belief of the heretical modernists (*neoterici*) that 'all Christians are rightfully priests' (*II On the Power of the Church* 2. 1, p. 126). Although the conciliarists had not, of course, challenged

the traditional view of the sacraments, much less the status of the priesthood, it was not absurd to see an analogy between their attacks on papal power and Luther's attack on episcopal privilege. The Parisian conciliarists had argued that although the Church differed significantly from civil society in that it was the *corpus Christi mysticum* and hence a gift from God rather than a human creation, the organization and the structure of power within the two societies were fundamentally the same. Both, furthermore, were 'perfect' communities unto themselves. This meant that the power of the pope within the Church could be constrained in exactly the same way as the power of the king in civil society; and that, just as secular rulers could not interfere in the affairs of the Church, so the pope could make no claim to secular authority. Vitoria accepted these basic premises. The pope, he states bluntly, 'gives no power to kings and princes, because no one can give what he does not have' (*I On the Power of the Church* 5. 2, p. 85). He also shared the view that both the civil and ecclesiastical states were 'perfect' commonwealths with their own separate ends; and he seems to have accepted Almain's general claim that God could not possibly have ordered the Church less perfectly than civil society, by failing to provide it with the same protection against tyranny with which secular states were provided. The Church, unlike civil society, may be both eternal and 'a spiritual community ordained towards a supernatural end', but no society, whatever its ends, 'can be self-sufficient (*perfecta*) without magistracies and authorities' (*I On the Power of the Church* 4. 2, p. 75). And if such intermediary powers exist, then, as in the secular state, they must possess some executive authority. Similarly the pope, like any secular ruler, is bound in conscience to obey his own laws.

But although Vitoria was prepared to accept those conciliarist claims, which accorded with his natural law arguments about the nature of all forms of power, he vehemently rejected the conciliarist conclusion that these implied that the members of the council 'represent the whole universal Church', and that the papacy was consequently an elective monarchy. Church power, he claimed, 'is not vested immediately in the Church'. The civil commonwealth 'may keep the administration of civil affairs in its own control; but the Church may not'. The pope, Vitoria reminded his opponents, was the 'Vicar of Christ', not the 'Vicar of the Church' (*II On the Power of the Church* 1. 1, p. 118). Church and civil power differed, Vitoria argued, in two crucial respects. First, 'Church power . . . neither was in the beginning, nor is in itself or indeed in any other way whatsoever, vested immediately in the whole universal Church, in the way in which civil power is vested in the commonwealth' (*II On the Power of the Church* 1. 1, p. 114). Second, although it was

clear that civil society could exercise no power over the Church, it did not follow that the papacy had no political power of any kind. The pope 'may neither confirm nor rescind civil laws' (*I On the Power of the Church* 5. 3, p. 88), because spiritual and civil powers are directed towards different ends which are in most cases independent; but there are cases in which the civil power might be subjected to the pope's spiritual authority. If, for instance, the action of a king were to cause his subjects to suffer a loss in spiritual goods, then the pope might be in a position to rescind a civil decree (*I On the Power of the Church* 5. 6, p. 90-1). This effectively granted to the papacy, if only *in extremis*, a measure of positive legislative authority; the authority, that is, to make laws outside the bounds of the natural and divine laws. To deny that the papacy did, indeed, possess such power was, in Vitoria's view, yet another feature which the 'new heretics' and the old conciliarists (or, more specifically, Gerson) held in common. For Vitoria, then, the pontiff could be said to enjoy the same high degree of authority within the Church as the king did within civil society; but he could also exercise limited executive power in the secular domain. This conception of power, inevitably, played a central role in Vitoria's observations on the most pressing, and certainly the most intractable, issue in contemporary political theory: the legitimation of the Spanish conquest of America.

Vitoria's two relections on this subject, *On the American Indians* and *On the Law of War*, are his best-known works. The dispute over the legitimacy of the colonization of the Americas, to which Vitoria alludes at the beginning of *On the American Indians*, began in 1513 when King Ferdinand called a commission (*junta*) of theologians and civil and canon lawyers to discuss the matter. This resulted in the first piece of colonial legislation, the Laws of Burgos of 1513. But the dispute only became the subject of the prolonged and international contention that it was to remain until the end of the eighteenth century with the discovery and conquest of Mexico in 1520-2, and of Peru in 1531-2. The invasion and virtual destruction of empires as great, or so it seemed, as China could hardly pass unquestioned. Vitoria first mentioned what he called 'the affairs of the Indies' in his lecture course on Aquinas' *Summa theologiae* for 1534-5 (*On the Evangelization of Unbelievers* §3, Appendix B), where he asked whether 'Christian princes can convert [the American Indians] by violence and the sword'. His answer was that only the supposed cannibalism of the Amerindians conferred upon the emperor the right of coercion, and only then because such crimes against nature 'are harmful to our neighbours' and the 'defence of our neighbours' is 'the rightful concern of each of us' (*On the Evangelization of Unbelievers*, p. 347). His letter of 1534 to Miguel de Arcos, the

Dominican Provincial of Andalusia, displays an evident disgust at the news of Francisco Pizarro's massacre of the Inca army at Cajamarca and the subsequent imprisonment of the Inca Atahualpa (Appendix A, pp. 331–3); and in the relection *On Dietary Laws, or Self-Restraint*, delivered in 1537, he returned to the question of cannibalism and the practice of human sacrifice at some length.

On the American Indians was delivered two years later. It is an attempt to answer the question, 'by what right (*ius*) were the barbarians subjected to Spanish rule?' (p. 233). The answer to this question, however, turned upon another: had the Indians in fact possessed dominion (*dominium*) over their own affairs, and over the territories they occupied, before the arrival of the Spaniards?

Before 1539, the Castilian crown's principal claim to dominion in America had rested on the Bulls of Donation made by Alexander VI in 1493. These had granted to Ferdinand and Isabella possession of all the lands inhabited by non-Christians they might discover in the Atlantic. The power to make such donations, however, rested upon those kinds of papal claims to temporal authority which Vitoria had already rejected (*On the Power of the Church* 5. 1–5, pp. 82–90), and now rejected again (*On the American Indians* 2. 2, pp. 258–64). Whatever claims the Castilian crown might have, therefore, could only be claims made in natural law.

It was, Vitoria said, evident from all he had heard that before the arrival of the Spaniards the Indians had been 'in undisputed possession of their property, both publicly and privately'. There were, therefore, only four possible grounds for the Castilian crown's implicit claim that they did not also enjoy *dominium*: because they were either sinners, non-Christians, madmen (*amentes*), or insensate (*On the American Indians* 1. 1, p. 240). The first of these grounds invoked, once again, the Lutheran supposition that rights depended not upon God's laws, but upon God's grace. Man, argued Vitoria, is a rational creature and he cannot lose that characteristic of himself through sin, any more than he can willingly renounce his natural rights (*On the American Indians* 1. 2; compare *On Civil Power* 1. 6–7). His *dominium* is inalienable. The same applies, of course, to non-Christians, since unbelievers are also subject to the natural law (*On the American Indians* 1. 3). It therefore follows that Christians cannot 'use either of these arguments to support their title to dispossess the barbarians of their goods and lands' (*On the American Indians* 1. 3, p. 246).

This left Vitoria with his last two claims. Fully irrational beings (*insensati*) do not have *dominium* because they are not truly men. They cannot be capable of suffering injustice, and creatures who are incapable

of suffering injustice clearly cannot be the subject of laws, and cannot, therefore, be said to possess rights; those who cannot receive *iniuria* cannot possess *iura* (*On the American Indians* 1. 4, pp. 247–8). Madmen have rights, but cannot exercise dominion (1. 6, p. 249). But in Vitoria's view there was no empirical evidence to suggest that the Indians were either madmen or *insensati*, and he concluded briskly that although the Indians were certainly barbaric, they 'undoubtedly possessed as true dominion, both public and private, as any Christians' (*On the American Indians* 1. concl., p. 250). This made any claim to rights of conquest, or the claim to have occupied previously unoccupied territory – the so-called 'right of discovery' (*On the American Indians* 2. 3) – invalid.

In the course of this refutation, however, Vitoria introduces, almost in passing, what was in effect the most contentious argument of all (*On the American Indians* 1. 1, p. 239). In 1510, the Dominican John Mair had suggested that the American Indians might be the 'slaves by nature' described, somewhat confusedly, by Aristotle in Books I and III of his *Politics*. In Aristotle's account there existed groups of people, possibly whole races (which at one point he loosely defines as 'the barbarians'), who possess only a share in the faculty of reason, 'enough to apprehend but not to possess true reason' (*Politics* 1254^b20–2). Such creatures may be said to be capable of understanding, but incapable of what Aristotle called 'practical reason' (*phronesis*), for 'practical reason issues commands . . . but understanding only judges' (*Nicomachean Ethics* 1143^a8–9). Conveniently for his masters, then, a 'natural slave' might be said to be one who is capable of carrying out a command, but unable to initiate one. To some of the apologists for the conquests, it had seemed obvious from their behaviour that the Indians were just such creatures, and that therefore they could not possibly have exercised *dominium* before the conquests.

Vitoria rejected this claim also, on the empirical grounds that the Indians clearly did have 'some order (*ordo*) in their affairs'. They lived in cities, had a recognized form of marriage, magistrates, overlords, laws, industries, and commerce, 'all of which require the use of reason' (*On the American Indians* 1. 6, p. 250). Even if it were the case that, as he claimed at the end of the relection, these things were not always quite what they seemed to be and that their societies lacked many things 'useful, or rather indispensable, for human use' (*On the American Indians* 3. 8, p. 290), this was clearly not because they belonged to a state of semi-rationality but because 'their evil and barbarous education' had made them incapable of fully rational behaviour (*On the American Indians* 1. 6, p. 250). They were in full possession of their rights, but without the capacity to exercise them. Their status was be similar to that

of children, who, in Aristotle's definition, were only potentially, but not actually, rational beings. Children do have *dominium* because they can suffer injury, and because in law their goods are held independently from those of their tutors. But as they cannot make contracts they own these goods only as their inheritance (*On the American Indians* 1. 5, p. 249). Vitoria conceded, therefore, that the Castilian crown might (but only might) be able to claim a right to hold the Indians and their lands in tutelage until they reached the age of reason. 'Such an argument could', he concluded, 'be supported by the requirements of charity, since the barbarians are our neighbours and we are obliged to take care of their goods' (*On the American Indians* 3. 8, p. 291).

Vitoria further considered seven 'unjust titles' for conquest, all of which depended either on spurious claims to world sovereignty by pope and emperor, or on the supposition that the Christian faith might be imposed by force. The emperor could, he argued, could make no claim to exercise either sovereignty (*imperium*) or dominion over peoples who lie outside the jurisdiction of the former Roman Empire (*On the American Indians* 2. 1). The papacy, as we have seen, has civil jurisdiction only in cases where the spiritual goods of Christians are endangered, and certainly cannot confer rights over pagans upon its Christian subjects (*On the American Indians* 2. 2). The faith cannot be imposed by force, any more than Christians have the right to punish non-Christians for their sins, for, as we have seen, neither sin nor unbelief can deprive a man of his natural rights (*On the American Indians* 2. 4-5). Of the last two unjust titles - that the Indians had voluntarily chosen to accept Spanish rule, and that America had been given to Spain 'as a special gift from God' - the first is evidently false, since even when the Indians seemed to be accepting Spanish sovereignty they had only done so under duress (*On the American Indians* 2. 6). The second is based on a prophecy 'contrary to common law' and would not, in any case, have sanctioned the Spanish invasion (*On the American Indians* 2. 7).

None of these arguments could provide the Castilian crown with *dominium* in America. Vitoria now turned, therefore, to a set of arguments which he characterizes as the 'just titles', drawn from the law of nations (*ius gentium*). Under this law the Spaniards possessed the right of what Vitoria called 'natural partnership and communication' (*On the American Indians* 3. 1, p. 278). Seas, shores, and harbours are necessary to man's survival as a civil being, and they have, therefore, by the common accord of all men, been exempted from the original division of property. This right of travel, the *ius peregrinandi*, gave the Spaniards the right of access to the Indies. There was also, under the legal definition given to 'communication', an implied right to trade. If it could be

said that the Spaniards had originally come to America as ambassadors, travellers, and traders, they had to be treated with respect and be permitted to trade with all those who wished to trade with them, just as the French must, in Vitoria's view, lawfully be permitted to trade in Spain (*On the American Indians* 3. 1, pp. 279–80) – though this argument was given short shrift by Vitoria's pupil Melchor Cano: 'who', he asked, 'would have described Alexander as a "traveller"?' Vitoria further argued that the law of nations granted the Spaniards *ius praedicandi*, the right to preach their religion without interference (*On the American Indians* 3. 2), and also that it permitted them to wage a just war 'in defence of the innocent against tyranny' (*On the American Indians* 3. 5, p. 287).

In the first two cases, the Spaniards could enforce their rights if opposed, because any attempt to deprive a man of his rights constitutes an injury, and the vindication of injuries provides grounds for a just war. As Vitoria had told Miguel de Arcos in 1534, 'they [the *conquistadores*] can allege no title other than *iure belli*, the law of war' (Appendix A, p. 332); and in *On the Law of War*, which he delivered as a continuation of *On the American Indians*, Vitoria considered whether such a war had, in fact, been waged against the Indians. By the terms of a just war the victor acquires the status of a judge and may, therefore, appropriate the property of the vanquished (although usually only their private goods, their *bona*). Similarly, prisoners taken in a just war may legitimately be enslaved (*On the Law of War* 3. 3, pp. 318–19; cf. Vitoria's comments on the Portuguese slave trade in his letter to Bernardino de Vique, Appendix A, pp. 334–5). It was clear, however, as he had already stated in *On the Evangelization of Unbelievers*, that only evidence of those sins against nature which constituted an injury to humanity itself could provide grounds for a just war against the Indians. And although Vitoria seems never to have ruled out this possibility, he also failed to accept it as a legitimation for the kind of colonial enterprise on which the Castilian crown was engaged.

Vitoria had thus left his king with only a slender claim to jurisdiction (*dominium iurisdictionis*) in America, but no property rights whatsoever. And, of course, the rights the crown might claim under the *ius gentium* would only be valid if, in fact, the Indians had 'injured' the Spaniards. If, however, as seemed overwhelmingly to be the case, they had not, all that Vitoria was left with was the starkly objective claim that, since the Spaniards were there already, any attempt to abandon the Indies would result in 'a huge loss to the royal exchequer, which would be intolerable' (*On the American Indians* concl., p. 291). As he reminded his audience, there was no evidence the Portuguese in Africa had gained less by licit trade than the Castilians had gained in America by illicit occupation.

Vitoria had not quite argued his emperor out of the larger portion of his empire; but he had come perilously close to it. The rumours which circulated in Mexico in the late 1530s that Charles V and later Philip II were preparing to 'abandon the Indies' were merely rumours, but they were founded on a clear, if over-extended, understanding of the implications of all Vitoria's writings, and of those of his pupils, for the precarious legitimacy of the Spanish monarchy in America.

Vitoria's writings on power and the rights of conquest effectively set the agenda for most subsequent discussions on those subjects in Catholic Europe until the late seventeenth century. In Spain his rulings – as they came to be seen – on the legitimation of the colonization of America became something of an orthodoxy. They also provided much of the theoretical underpinning for an extensive body of ethnographical writings on the American Indians. And although it is clearly false to speak of Vitoria as the father of anything so generalized and modern as 'International Law', it is the case that his writings became an integral part of later attempts to introduce some regulative principle into international relations.

Principal events in Vitoria's life

- ca. 1485 Francisco de Vitoria born, probably in Burgos, one of three sons of Pedro de Vitoria and Catalina de Compludo. (One brother, Diego, also became a Dominican, a fierce opponent of Erasmus and, in 1527, prior of the Dominican convent at Burgos. Of his other brother, Juan, we know nothing.)
- 1492 Columbus makes the first landfall in the New World.
- 1493 Pope Alexander VI grants sovereignty in the New World to the Castilian crown.
- 1504 Queen Isabella of Castile dies on 26 November.
- 1506? Vitoria enters the Dominican order at the monastery of San Pablo, Burgos.
- 1509–10 Vitoria is sent to the Collège de Saint-Jacques at Paris. There he studies arts under the Valencian Juan de Celaya, from whom he learns a late form of nominalist logic known as terminism.
- 1512–13 Vitoria begins to study theology under the Fleming Peter Crockaert. Crockaert began as a nominalist, but had been converted to Thomism and, in 1507, had replaced Peter Lombard's *Sentences* as the set text in theology by Aquinas' *ST*, a move which Vitoria himself was to make at Salamanca some years later.
- 1513 A meeting (*junta*) of theologians and canon and civil lawyers meet in Burgos to discuss, for the first time, the legitimacy of the Spanish conquests in America.
- 1515 Crockaert's edition of Aquinas' *ST*, which had been prepared with Vitoria's assistance, is published in Paris.
- 1516 King Ferdinand of Aragon dies on 23 January. Vitoria begins to teach theology at Paris.

- 1519 Charles I of Spain is elected Holy Roman Emperor, as Charles V, on January 28.
- 1520–1 Vitoria edits the *Sermones dominicales* of his countryman Pedro de Covarrubias, and the *Summa aurea* of St. Antonino of Florence.
- 1522 Vitoria receives the licence and doctorate in theology. He writes an introduction to a new edition of the *Repertorium morale* (c.1340) of the medieval French scholar, Pierre Bersuire OSB (c.1290–1362), a sort of alphabetical encyclopaedia.
- 1522–3? Travels in the Low Countries.
- 1523 Vitoria becomes professor of theology and director of studies at the College of San Gregorio in Valladolid.
- 1526 Vitoria is elected to the Prime Chair of Theology at the University of Salamanca, and is transferred to the Dominican house of San Esteban in that city.
- 1527 Vitoria participates in a meeting (*junta*) in Valladolid called by the Inquisitor General Alonso Manrique to discuss the orthodoxy of the writings of Erasmus, whose *Enchiridion militis Christiani* had been translated into Spanish the previous year. The meetings are, however, interrupted by an outbreak of the plague, and come to no conclusion.
- 1529–30 While in Burgos on university business, Vitoria falls seriously ill for the first time.
- 1539 Vitoria is asked by the crown to assess the orthodoxy of the practice of forced baptism in America.
- 1539–40 Together with Domingo de Soto, Vitoria attempts to establish a university press at Salamanca.
- 1545 Vitoria is nominated by Charles V as a delegate to the Council of Trent, but is forced to refuse because of ill health.
- 1546 Vitoria dies on August 12.

Bibliographical note

Biography

There is no satisfactory biography of Vitoria. Villoslada's *La universidad de París durante los estudios de Francisco de Vitoria* (Villoslada 1938) is an excellent account of Vitoria's years in Paris, but Father Getino's *Francisco de Vitoria: su vida, su doctrina e influencia* (Getino 1930) is little more than well-documented hagiography. Further information is available in the introduction to the edition of Vitoria's *Relecciones* by Urdániz (Vitoria 1960).

Intellectual background

Studies on Vitoria's intellectual milieu and the 'School of Salamanca' are few and uneven in quality. The best analysis of the political thinking of the Neo-Thomists is that of Skinner, in his *Foundations of Modern Political Thought* (Skinner 1978: II. 135–73). P. Mesnard, *L'Essor de la philosophie politique au XVI^e siècle* (Paris, 1951) is still worth consulting. Hamilton's *Political Thought in Sixteenth-Century Spain* (Hamilton 1963) provides a useful introduction to the writings of Vitoria and some of his pupils; J. A. Fernández Santamaría, *The State, War and Peace: Spanish Political Thought in the Renaissance 1516–1599* (Cambridge, 1977) contains interesting observations, but is weak on the legal and theological context of Vitoria's thought. Marcel Bataillon's chapter on the *Junta* of Valladolid in his classic study, *Erasmus y España* (Mexico, 1966), pp. 226–78, offers a valuable account of Vitoria's relationship with Erasmus. The essays in P. Rossi (ed.), *La seconda scolastica nella formazione del diritto privato* (Milan, 1977) provide an introduction to the School of Salamanca's thinking on private law, while the first chapter of J. Muldoon, *Popes, Lawyers and Infidels: The Church and the Non-Christian World, 1250–1550* (Liverpool–Philadelphia, 1979) discusses Vitoria's use

of the canon lawyers. Tuck's *Natural Rights Theories* (Cambridge, 1979) contains an authoritative discussion of *ius* and *dominium*; so does K. Seelmann, *Die Lehre des Fernando Vázquez de Menchaca vom dominium* (Cologne, 1979), though he comes to different conclusions. V. Carro, *La teología y los teólogos-juristas españoles ante la conquista de América* (Salamanca, 1951) is generally tendentious and chauvinistic, but well-informed on Vitoria's theology.

Works

On the transmission of the texts of Vitoria's works see the following 'Critical note on texts and translation'. The standard modern edition of all thirteen *Relectiones* by Urdániz (Vitoria 1960) has been superseded, at least as far as the critical text is concerned, by the editions of the two relections on the affair of the Indies in the Corpus Hispanorum de Pace series (Vitoria 1967, 1981). Vitoria's lectures on *ST* may be consulted in Beltrán de Heredia's reliable edition (Vitoria 1932–52).

Of Vitoria's individual works, only *On the American Indians* and *On the Law of War* have received attention. J. Baumel's *Les Problèmes de la colonisation et de la guerre dans l'oeuvre de Francisco de Vitoria* (Montpellier, 1936) makes interesting observations, as does the excellent introduction to Barbier's translation (Vitoria 1966). Pagden's 'The "School of Salamanca" and the "Affair of the Indies"' (Pagden 1981b) gives an account of the background to *On the American Indians*; this text, and its implications, are analysed at greater depth in his *The Fall of Natural Man* (Pagden 1986), and 'Dispossessing the Barbarian: the Language of Spanish Thomism and the Debate over the Property Rights of the American Indians' (Pagden 1987).

Critical note on texts and translation

The texts

This anthology consists of unabridged translations, arranged in chronological order, of five of Vitoria's thirteen surviving *Relectiones theologicae* (*On Civil Power*, I and II *On the Power of the Church*, *On the American Indians*, and *On the Law of War*); three articles from *On Dietary Laws, or Self-Restraint*; and extracts from Vitoria's lecture-cycle on Aquinas' *Summa theologica* I-II. 90–105 (*On Law*). In the appendices we give a passage from Vitoria's lectures on ST II-II. 10, and four of his letters (the latter being the only texts written in Spanish).

As explained in the Introduction, none of these works appeared in print during Vitoria's lifetime. The only surviving witnesses for the great cycles of Vitoria's ordinary lecture-courses (*lectiones*) on Lombard's *Sentences* and Aquinas' *Summa theologica*, which as Prime Professor of Theology he was required to deliver daily for over twenty years, are MSS known as *reporationes*: that is, notes taken down by students from the master's dictation in the Salamanican lecture-halls. Some twenty such MSS survive, the most important being those of Francisco Trigo and Juan de Barrionuevo; they remained unpublished until this century, when they were edited by Beltrán de Heredia. The texts on ST I-II. 90–105 and II-II. 10 translated here are taken from *reportata* of the lecture-courses of 1534–6 preserved in Vatican MS Ottob. 1000 and Salamanca University MS 43 (edited in Vitoria 1952: 11–93, and Beltrán de Heredia 1928: 185–203).

By contrast, the text of the relections, which Vitoria was required to deliver once a year from 1526 to 1540, derives from a single original, a copy in Vitoria's own hand or one that circulated on his authority. The existence of this original, now lost, is attested in the most authoritative of the surviving MSS copied from it, known as *P* or *Palentinus*. This

contains thirteen of Vitoria's relections, as well as several others by Domingo de Soto, copied by three scribes, Andrés de Burgos, Hernando Ortiz, and Juan de Heredia, working from Vitoria's papers in the monastery of San Esteban in Salamanca between 1538 and 1545 (Beltrán de Heredia 1928: 101–5, §22; facsimile in Vitoria 1933–5: I. 1–211). In *On Civil Power*, Andrés de Burgos copied four folios of matter not found in other sources (1. 11), and inserted a note in brackets: 'The above text on the kingdom of Christ was not in the written text (*in relectione scripta*), since the professor delivered a different and better version from memory' (fol. 36^r = *On Civil Power* 1. 11, p. 29). Likewise, at the end of the relection *On Dietary Laws, or Self-Restraint*, the same copyist noted: 'The three conclusions of Part II, with the last conclusion of Part I, are missing *even in the original*' (fol 105^v). This is our evidence that *P* was copied directly from the *originale* ('fountain-head or authoritative version') of Vitoria's script of the relections, supplemented by certain annotations from other authentic sources.

The thirteen relections of *P* (or twelve, if *I* and *II On the Power of the Church* are counted together) were published within twenty years of the author's death, under the title *Relectiones theologicae XII*. This posthumously printed text differs from *P* in thousands of points of detail, of which the loss of four leaves of *On Civil Power* just mentioned is only one striking example. In fact, it is clear that the printed editions, together with the remaining MSS *V* or *Valentinus* (a complete text of the relections dated 1554 written by Bartolomé Sánchez, notary of Salamanca University) and *G* or *Granatensis* (containing six relections; Beltrán de Heredia 1928: 123–30), record a revised version of the relections which we may call the Second Recension. All these witnesses of the Second Recension date from at least a decade after Vitoria's death; even by 1608, doubts were expressed whether the revisions were due to the author or to his editors (Vitoria 1981: 82–3). The textual evidence – particularly the chronological implications of the variants in *On Civil Power* 2. 1 (footnote 60), *On the American Indians* 2. 1 (footnote 44), and *On the Law of War* 2. 3 (footnote 27), for example – suggests that these doubts were justified: the variants in the Second Recension derive from a revision made posthumously, probably by the board appointed by Salamanca University under Melchor Cano a year and a half after Vitoria's death 'to publish the writings left by the professor' (Beltrán de Heredia 1970: 617–18, §700).

The first of the printed editions was published in Lyon (Vitoria 1557, referred to henceforward as *L*) by a French bookseller, Jacques Boyer, who claimed in his epistle-dedicatory to Fernando de Valdés, archbishop of Seville and Inquisitor-General of Spain, to have known Vitoria per-

sonally. Boyer prepared his copy for press in Salamanca (the epistle is dated 'Salamanca, 1 September 1556'), and used, as I have said, a MS of the Second Recension. The only other textual witness of the relections which need concern us is the second printed edition, known as *S*, published at Salamanca with a dedication to Prince Carlos and a licence dated 4 September 1563 (Vitoria 1565). Its editor, the Dominican friar Alonso Muñoz de Tevar, lecturer in theology and one-time pupil of Vitoria, tells us frankly in his epistle 'To the Candid Reader' (Vitoria 1933-5: I. xxiv-xxvi) that he was motivated by chauvinistic spite against the odious French edition of the upstart Boyer, and claims that his edition was 'authorized' by Soto and Cano (both of whom had died in 1560); despite his snarls against Boyer, however, a summary recension of variants reveals that Muñoz's edition consists for the most part of a close plagiarism of the Lyon printing. The printer Canova set up *S* from a corrected copy of *L* rather than from fresh MS copy, reproducing many of Boyer's misprints letter for letter, along with the same division into two volumes and double columns, the same tables and order of contents, the same paragraphs and *tituli*, and the same index - all of them Boyer's contributions. Where Muñoz's text does differ from Boyer, this is due either to printer's misprints, or to Muñoz's habit of 'improving' Vitoria's syntax by eliminating repetitions, changing subjunctives to indicatives, banishing what he regarded as improper uses of the conjunction *quod*, and adding phrases to give a more Ciceronian balance (see Wright's introduction in Vitoria 1917: 196-8, 204-5).

A number of further printed editions of Vitoria's lectures appeared in the sixteenth and following centuries, notably at Ingoldstadt, Lyon, Venice, Antwerp, and Cologne, and (despite a brief appearance on the inquisitorial Index of prohibited books) in Madrid (Vitoria 1933-5: I. xxvii-xxvii); but all of these later editions derived from *S* or even less authoritative sources, and are therefore irrelevant for textual purposes. There is still no satisfactory critical edition of any of the relections except *On the American Indians* (Vitoria 1967) and *On the Law of War* (1981).

The upshot is clear: the editor or translator of Vitoria's relections must use the Palencia MS *P* as his copy text, and Boyer's edition *L* as his main witness for the Second Recension. Where both agree, we probably have Vitoria's words; elsewhere *P* is to be preferred except where it is demonstrably corrupt, or where there are special reasons for preferring *L* (see, for example, the notes on the 'Prologue' to *On Civil Power*). *S* can be used against *L* when it agrees with *P*, but not when it differs from both. It should be stressed, therefore, that this edition diverges in hundreds of places, sometimes widely, from the printed texts and

translations of the relections, which tend to derive from *S*. I have attempted to make a translation which, by returning to the MS, comes closer to Vitoria's authentic and original words than any that has previously been published. A selection of the most important variants are indicated in the footnotes, the source for each reading being identified by the sigla *P*, *L*, *S* (Palencia MS, Lyon edition, and Salamanca edition respectively). Editorial conjectures or emendations in the text are enclosed in square brackets.

The translation

The task of translating into English the Latin works of a sixteenth-century Spanish theologian 'can never [to borrow Maitland's masterly understatement in a similar predicament] be perfectly straightforward'. The aim has been to match the plainness and technical rigour of Vitoria's Latin with plain English, shunning the pretty paraphrases which have been favoured by some translators. Some apology may be needed for the decision to give the Biblical quotations from the AV, instead of clearer and more accurate modern translations; this is intended as a reminder that, for Vitoria, the wording of these inspired texts was inerrant as no human authority could ever be. Quotations from Aristotle are taken from the Revised Oxford Translation (Aristotle 1984); those from Thomas Aquinas have been adapted from the Blackfriars edition (Aquinas 1963–75).

In accord with the general criteria of this series, consistent English equivalents have been used for the key technical terms in Vitoria's philosophy. Many of the specialized terms concerned will be familiar to every student of Renaissance political thought (*res publica* 'commonwealth', *princeps* 'prince', *ciuitas* 'city-state'). Others, less familiar, belong to the usage of Roman and canon law (*societas* 'partnership', *potestas ordinis* 'sacramental power', *traditio* 'livery of seisin', *dominium rerum* 'ownership, property', *dominium iurisdictionis* 'jurisdiction, lordship'). We have tried to alert the reader to such terms by including the Latin words in parentheses after their English equivalents; some of the most abstruse are explained in the Glossary at the end of the book.

Boyer printed the relections without typographical indents or divisions; the only referencing he provided was a sketchy table of numbered *tituli* at the beginning of each relection, with corresponding paraph-signs (¶) and call-numbers in the margins of the text, editorial arrangements which he stated clearly were his own (*L*, fol. a4^r). We can infer that his criterion was not to limb out the divisions of the argument, but to pro-

vide a key to Vitoria's *notabilia*; hence the paraphs often come just where a modern editor would least think of dividing the text – for example, immediately before the final paragraph of an argument, Boyer's purpose clearly being to allow the reader to find Vitoria's conclusion without having to work all through his reasoning.

Succeeding editions have retained Boyer's layout, with minor tinkering, which makes it difficult both to follow the structure of the arguments, and to track down quotations and references. Vitoria himself, however, composed his lectures according to an elaborate dialectic format based on the medieval scholastic *quaestio*. Traces of this format are preserved in marginal annotations to some relections in MS *P* and in the introductory *diuisiones* made by Vitoria himself. A standard relection begins with a passage from Lombard's *Sentences* or Aquinas' *Summa theologiae*, introduced by the words *Locus relegendus est*, 'the passage to be re-read is . . .' (hence *relectio* 're-reading'). The topic is next divided into questions (*diuisio*), and the questions subdivided into articles (usually called *propositiones* in *P*'s marginalia). Each article then follows a set pattern: the objections against the proposition (*obiecta*) are listed first, followed by the authorities for the proposition (*sed contra*). Only after these rituals have been performed does Vitoria give his own views (*conclusiones*) in what is technically known as the 'body' of the article (*in corpore*). Having done so, he frequently returns to the *obiecta* and answers them one by one with a series of responses (*ad primum*, *ad secundum*, etc.). Wherever possible, therefore, this logical structure has been reflected in the typographical layout of the present translation. The marginal rubrics of *P* have been supplemented, where necessary, by deductions from the text itself (such additional headings being enclosed in square brackets as editorial conjectures). To facilitate cross-references to other editions, Boyer's paraphs have been retained in the margin as bold-face numbers preceded by the sign §.

One other liberty has been taken with the text. Vitoria's method of quotation is likely to mislead modern readers. Like all sixteenth-century scholars, he cites *authorities* carefully (though not always correctly), but does not acknowledge quotations used for rhetorical embellishment or simple plagiarisms (for example, the long passage silently copied from Lactantius' *De opificio dei* in *On Civil Power* 1. 1–2; see footnotes 7–15 *ad loc.*). Furthermore, Vitoria read his texts of Scripture, of law, of Lombard's *Sentences*, of Aristotle, in the traditional way, swathed and swaddled in the *adiuncta glossa* of old medieval schoolmen. Thus when he cites a particular canon or decretal the point of the citation may lie, not in the text of the canon or decretal, but in some familiar discussion in the *Glossa ordinaria*, or in the fact that the canon or decretal has been

adduced in a well-known discussion by some other author. Methods of citation have also changed; Vitoria was as scrupulous as it was possible to be in the days before properly indexed and referenced editions, but he expects us to know that 'the Archdeacon' is Guido de Baysio, that 'Armachanus' is Richard Fitzralph (bishop of Armagh), and that 'ut in c. sicut de presumpt.' refers to *Decretales Gregorii IX* 2. 23. 1. Such references have therefore been modernized in the text (with varying degrees of confidence), and the presence of the more important subtexts indicated in the footnotes and in the Glossary, where the most important canons are listed under their traditional titles (*Cum ad uerum*, *Per uenerabilem*, *Quod super his*, etc.).

In standardizing names, the form given in the *Oxford Dictionary of the Christian Church* has been preferred unless there is a more usual form likely to be encountered by English-speaking students in recent standard works such as Skinner's *Foundations of Modern Political Thought*. This means that some names are given in the vernacular, some in Latin, and some are not names at all, but styles (Hostiensis for Henry of Suso, bishop of Ostia). We have made an attempt to help identify the more important persons mentioned in the text by giving alternative forms of names and brief details in the 'Biographical notes' at the end of the book.

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ON CIVIL POWER

(De potestate civili)

On Civil Power, probably delivered at Christmastide in 1528, is the earliest of Vitoria's surviving relections.¹ The textual discrepancies between the two recensions represented by P and the printed editions are more extensive than those of any other of Vitoria's lectures. Some of the variants are spectacular, such as the four-folio excursus at l. 11 which failed to appear at all in the printed editions,² others are trivial; but every paragraph offers some differences in phrasing. The scribe of P used Vitoria's original 'written text of the relection', together with other autograph papers (l. 11 ad fin., footnote 55). Unusually, however, he failed to preserve the author's rubrics to the relection's propositions; the division into questions and articles has therefore to be supplied by deduction.

The Second Recension, represented by L, preserves a version not only corrupt but heavily cut. One motive for the omissions may have been the removal of controversial or historically obsolete points (see footnote 42, perhaps 21 and 44-5; for prima facie evidence of a correction made after 1530, see especially footnote 60).

A separate textual problem is the 'Prologue' printed at the beginning of the relection in L, which is absent from P. In the light of Vitoria's stated aversion to preambles of any kind the Prologue's inclusion is curious; but there are similar proems preserved in at least two other relections, which may mean that Vitoria prefaced the viva voce delivery of his lectures with a

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1. Beltrán de Heredia (1928: 134-5) establishes that this was Vitoria's second relection after taking the Prime Chair of Theology (7 September 1526). His first is lost.
 2. That the excursus on the kingdom of Christ was an authentic and integral part of the relection is shown by Vitoria's explicit reference to it in *I On the Power of the Church* 5.9 §16, and the implicit allusion in *On the American Indians* 2.1 (see footnote 46 *ad loc.*). Further, the passage was plagiarized by one of Vitoria's audience, in a commentary on Lombard's *Sentences* (Beltrán de Heredia 1934: 5-29).

*short occasional introduction not intended for inclusion in the permanent text of the originale.*³ *The Prologue is placed in angle brackets to indicate doubtful authenticity.*

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3. For Vitoria's aversion to preambles, see for example the beginning of his course on *ST II-II* in 1534 ('Since I have deliberately abstained in all my studies from any kind of prologue or preface') and a similar boast at the beginning of the course on *ST I* in 1539 (Beltrán de Heredia 1928: 72, 41). The relections with prologues are *De matrimonio* (in *PS*, and less elaborately in *L*; a brief historical allusion to the occasion of the lecture, Henry VIII's divorce proceedings against Catherine of Aragon) and *De homicidio* (an apology for lecturing on a public holiday, and a retraction of his previous opinion on the question of suicide).

RELECTION OF THE VERY REVEREND FATHER
 FR. FRANCISCO DE VITORIA
 ON CIVIL POWER
 DELIVERED IN SALAMANCA, A.D. 15 [2] 8⁴

[Prologue]

< The office and calling of a theologian is so wide, that no argument or controversy on any subject can be considered foreign to his profession. But there are never many really outstanding men in any discipline at any one time, as Cicero once said of orators (*De oratore* I. 2–5); perhaps this is the reason why there are now, to put it no more strongly, so few really good and solid theologians. For *theology* is, as the Greek name implies, the chiefest and first of all sciences and disciplines in the world (Aristotle, *Metaphysics* 983^a4–11). Small wonder, then, that so few have achieved mastery in so vast a subject.

In this broad and mighty field of universal theology, whose acres are infinite, I have chosen for myself a single little corner. Nevertheless, if I can treat it as it deserves I am confident, learned and distinguished gentlemen, that it will prove worthy of your attention. My subject is the commonwealth; and though much has been written on this topic by profound and learned philosophers, there remain many questions to discuss. Indeed, the subject is too ample for one lecture. For today's theme I have elected to speak about the nature of power, public and private, in the government of the commonwealth. >

THE PASSAGE TO BE RE-READ is Lombard's *Sentences* II. 44, on the text from Paul's Epistle: 'For there is no power but of God' (Rom. 13: 1). This passage raises a number of problems, but my discussion will be strictly confined to the single topic of lay or secular power, avoiding unnecessary digressions. The lecture will therefore be divided into three questions. The first is as follows:

4. The date, which reads '1538' in *P*, is corrected by Beltrán de Heredia 1928: 134–5. It is omitted by *L*, which however inserts the following Prologue (see the introduction to this chapter).

- §1 **Question 1: Every public or private power by which the secular commonwealth is administered is not only just and legitimate, but is of God, and so cannot be abolished even by the consensus of the whole people**

Before proceeding to the proof of this first proposition, it will be necessary to explain certain basic points. But I am resolved not to chase up the whole mass of possible approaches to the argument by starting, like the authors of the tale of Troy, 'with Helen's birth from the egg of twins'.⁵ I shall confine myself as far as I can to the strict minimum of explanations necessary to the task, in the orderly and concise style proper to scholastic method.

- §2 Power, then, can be of two kinds: public and private. So I shall discuss public power first, and private power second. And since, as Aristotle says, 'men do not think they know a thing till they have grasped the *why* or primary cause of it' (*Physics* 194^b19), I shall consider my brief fulfilled if I first investigate the causes of civil and lay power, which is to be the subject of this whole relection. Once the causes are understood, the potential and effects of power itself will become evident.

[Question 1, Article 1: Necessary causes are final causes]

First, therefore, we may set down the principle established by Aristotle himself in his *Physics*, not merely in the physical sciences but in all human sciences as well: that *necessary causes*, the first and most potent of all causes, must be considered as functions of purpose (*Physics* 198^b1 - 199^b32).⁶ Whether this principle was established by Aristotle himself, or whether he got it from Plato, it has proved a mighty tool in philosophy, shedding light on all subjects. Earlier investigators, not only the rude and ignorant ones but even those first distinguished with the name of 'philosophers', saw necessary causes as inherent in *matter*. Thus, to use Aristotle's own example, they argued that the necessary cause in the construction of a house was not its purpose, the use for

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5. This phrase, which is omitted by *L*, is an allusion to a well-known passage on 'beginning in *medias res*' in Horace, *Ars poetica* 147-9. Leda was raped by Zeus in the form of a swan; she gave birth to a 'twin' egg (*gemino ab ovo*) which contained Helen and her brothers Castor and Pollux.
6. Aristotle's famous treatment of causality (*Physics* 194^b16 - 200^b7) establishes the four types of cause - material, formal, efficient, and final - which provide the framework for Vitoria's ensuing discussion. For the rest of this paragraph, Vitoria also quotes liberally from *Metaphysics* 983^a24 - 983^b10.

which its human occupants might design it, but the fact that heavier matter naturally tends to sink downwards; this, in their view, was why the stones and foundations are placed below the ground while the lighter wooden superstructure is placed on top (*Physics* 200¹–4). Or again, a man's feet are placed beneath him, not because he needs them to walk with, but because they are the heaviest part of the body; similarly, the bones of animals are inside their bodies, not because they are necessary to give the flesh and limbs a firm foundation, but because the matter of which bones are made is harder and denser than that of flesh.

But these men, sunk as they were in their foolish delusions, were on completely the wrong track. Working with this materialist premiss, they could not give a proper explanation of the smallest thing, let alone comprehend with their philosophy the fabric and mechanism of larger and more complex structures. What answer could they give, if I were to ask how the variety of forms which matter takes in the beautiful structure of the Earth, set as a solid globe in the centre of the universe, are bonded together on every side by the mutual attraction of parts and clothed with flowers and greenery and trees?⁷ How would they satisfy my curiosity about the wellsprings of our cooling and perennial streams with their crystal waters, or the springtime greenery of banks and grottoes? How explain the wonderful structure of the human body, the separation, order, commodity, and beauty of its separate parts and limbs all made from a single material? Or how tell, lastly, what force of matter brings it about that

While the mute Creation downward bend
Their sight, and to their earthy Mother tend,
Man looks aloft, and with erected Eyes
Beholds his own Hereditary Skies?⁸

The materialists can only answer lamely that these things *must* be so 'of material necessity'; that man must walk erect, while brute animals creep

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7. In the following passage Vitoria answers the theory of atomism, which he associates with Epicureanism, by the Stoic argument from design: namely, that the complexity of creation itself proves the existence of an originating rational and provident creator. The whole passage, which was much imitated by Vitoria's successors (see, for example, the close verbal parallels in the extract from Juan de Mariana's *De rege* quoted by Hamilton 1963: 31–2), relies heavily on Cicero's *De natura deorum* and Lactantius, *De opificio dei*, as shown below.
 8. Ovid, *Metamorphoses* I. 85–6 (Dryden's translation). The quotation shows that Vitoria's source for this use of man's upright stance (*status rectus*) as an argument for divine providence is Lactantius, *Divinae institutiones* II. 1. 14–19, where the same verses of Ovid are quoted. Man's biped stance, it was argued, showed his celestial origin, proved that he was created for the contemplation of higher things, and confirmed that he was made 'in God's image' (Gen. 1: 27; cf. ST I. 91. 3 ad 3).

on their bellies, not for any inherent purpose or utility, but because the physical nature and condition of animal matter is different from ours! This is the source of the foolish delusions of Epicurus and that raving disciple of the devil Lucretius,⁹ who said that ‘eyes did not come into being in order to see, nor ears to hear’, but that everything is the chance product of aimless combinations of atoms crashing into each other in the infinite void.¹⁰ Can anything more absurd or stupid be imagined, or any clearer indication of the fundamental inanity of this theory! The absurdity is amply demonstrated by Cicero in his *De natura deorum*, and by Lactantius in *De opificio dei*.

For our purposes, it will be enough for the present to hold fast to ‘the very principle of truth, without which man must always be led astray’.¹¹ Let us accept the following conclusion on trust: that not just heaven and earth and all the other parts of the universe, and man the ruler of the world, but every single atom exists for some use and purpose; and that everything must be as it is because of that purpose or *final cause*, which is the true reason and *necessary cause* of all things.

§3 [Question 1, Article 2: The final cause of civil power is natural necessity]

We must now inquire and investigate *what is the purpose or final cause for which the power under discussion is constituted*.

1. To answer this, we must first consider the fact that although man excels the other animals by his possession of reason, wisdom, and speech, guiding Providence has nevertheless denied to ‘eternal, immortal, and wise mankind’¹² many things which she has bestowed upon the rest of the animals. In the first place, in order to ensure the safety and defence of animals, Mother Nature

9. This phrase (*et que peccati discipulus delirat Lucretius*) is replaced in *L* by ‘and his disciple Lucretius’; but *P*’s reading is guaranteed by the source of this passage, Lactantius, *De opificio dei* 6. 1–2 (‘Epicuri stultitiam . . . illius enim omnia sunt quae delirat Lucretius’).

10. Lactantius, *De opificio dei* 6. 8, quoting Lucretius, *De rerum natura* IV. 825–41.

11. *De opificio dei* 6. 12. The ‘principle of truth’ is the Aristotelian notion of the ‘necessary and final cause’: compare *Metaphysics* 984^a17–^b10 ‘men were again forced by the truth itself to inquire into the next kind of cause’; and 984^b15 ‘when one man said that reason was the cause of the world and of all its order, he seemed like a sober man in contrast with the random talk of his predecessors’.

12. *De opificio dei* 2. 9.

endowed them all from the very beginning with coats to fend off the frost and the weather; next, she provided each species with its own defence against attack, giving stronger creatures weapons to fight off the attacker, weaker ones the ability to escape danger by fleetness of foot, [and those lacking both strength and speed] the ability to protect themselves with cunning¹³ or by taking cover in a burrow; so some animals have wings to fly, or hooves to run, or horns, others have teeth or claws for fighting, and none lacks defences for its own protection.

- §4 But to mankind Nature gave 'only reason and virtue', leaving him otherwise frail, weak, helpless, and vulnerable, destitute of all defence and lacking in all things, and brought him forth

naked and unarmed like a castaway from a shipwreck into the midst of the miseries of this life, unable to do anything but bewail and lament his frailty with endless forebodings, as 'one whose future life will bring so many ills', as the poet said; for in the words of Scripture, 'man that is born of a woman is of few days, and full of trouble' (Job 14: 1).¹⁴

So it was that, in order to make up for these natural deficiencies, mankind was obliged to give up the solitary nomadic life of animals, and to live life in partnerships (*societates*), each supporting the other.¹⁵ As Solomon says, 'if they fall, the one will lift up his fellow: but woe to him that is alone when he falleth, for he hath not another to help him up' (Eccles. 4: 10).

2. On the same subject Aristotle shows in his *Politics* that man is a social animal (*animal sociabile*) not only because he is unable on his own to provide for himself a sufficiency of the physical necessities of existence, but also because his rational soul itself makes him need

13. *P* astu : rostro veluti hasta *L*. *P*'s reading is guaranteed by the text of Lactantius, *De opificio dei* 2, 2-4, the source of this paragraph. Both *P* and *L* omit the preceding phrase in square brackets, here supplied from Lactantius.

14. This paragraph too is an unacknowledged quotation of *De opificio dei* 3, 1-2. The poet is Lucretius, in one of his best-known passages (*De rerum natura* V. 222-7):

Thus like a Sailor by the Tempest hurl'd
Ashore, the Babe is shipwreck'd on the world:
Naked he lies, and ready to expire;
Helpless of all that human wants require:
Expos'd upon unhospitable Earth,
From the first moment of his hapless Birth
Straight with foreboding cries he fills the Room
- Too true presages of his future doom! (Dryden's translation)

15. *De opificio dei* 4, 20-1.

partnership (*Politics* 1253^a3). For since it is agreed that the soul is composed of two parts, understanding and will, is it not also the case, as Aristotle teaches in *Nicomachean Ethics* (1103^a14-18), that the understanding can only be perfected by training and experience?¹⁶ And these cannot be gained by living in isolation from our fellows. In fact, in this respect also we seem to be at a disadvantage compared to brute animals, for whereas they are able to understand the things that are necessary for them on their own, men cannot do so.

3. Aristotle also declares that language is the messenger of understanding, and was given to man solely for this purpose, so that in this one respect he excels or surpasses all other animals. Now language could not exist outside human partnership (*Politics* 1253^a14-16). Even if it were possible for wisdom to exist without language, it would be a rough and uncouth wisdom, for in the words of *Ecclus.* 41: 14, 'wisdom that is hid, and a treasure that is unseen, what profit is in them both?'

4. And again, in the case of will, whose ornaments are justice and amity (*amicitia*), what a deformed and lame thing it would be outside the fellowships of men. Justice can only be exercised in a multitude; and amity, 'which we use on more occasions than fire and water themselves', as Cicero says (*De amicitia* 6. 22), and apart from which Aristotle says no virtue can exist (*Politics* 1253^a38-40), would disappear completely without some sort of shared life. And even if a man could live by and for himself alone, such lonely existence would be a dreary and unlovely thing. 'Nature abhors all solitary things' (Cicero, *De amic.* 23. 88), and we are all, as Aristotle says, impelled by nature to seek society. As Cicero says, 'even if a man were to climb the skies and behold the workings of heaven and the beauty of the stars, the awe-inspiring sight would lack savour without a friend to share it' (*De amic.* 23. 88). For that reason I regard Timon of Athens, who was prompted by his inhuman and perverse nature to cut himself off from the companionship of men, as having led a miserable existence (*De amic.* 23. 87); in the opinion of Aristotle such men should be counted as beasts (*Politics* 1253^a29-37).¹⁷

Since, therefore, human partnerships arose for the purpose of helping to bear each other's burdens, amongst all these partnerships a civil

16. Aristotle says: 'intellectual excellence owes both its birth and its growth to teaching, for which reason it requires experience and time'.

17. Cicero argued that 'the first cause of association is not weakness, but a kind of natural sociability (*congregatio*), since man was not created to be a species of wandering loners' (*Republic* I. 25). A similar conflation of Epicurean, Aristotelian, and Ciceronian ideas is found in Lactantius, *Divinae institutiones* VI. 10. 13-18, and Aquinas *De regimine principum* I. 1 (in Aquinas 1970: 2-6).

partnership (*ciuilis societas*) is the one which most aptly fulfils men's needs. It follows that the city (*ciuitas*) is, if I may so put it, the most natural community, the one which is most conformable to nature. The family provides its members with the mutual services which they need, but that does not make it whole and self-sufficient (*una sibi sufficiens*), especially in defence against violent attack.¹⁸ This seems to have been the chief reason which induced Cain and Nimrod to compel the first men to live together in cities (Gen. 4: 17, 10: 11).

§5 THE CLEAR CONCLUSION is that the primitive origin of human cities and commonwealths was not a human invention or contrivance to be numbered among the artefacts of craft, but a device implanted by Nature in man for his own safety and survival.¹⁹

It follows immediately from this reasoning, *that the final and necessary cause of public powers is the same*. If assemblies and associations of men are necessary to the safety of mankind, it is equally true that such partnerships cannot exist without some overseeing power or governing force. Hence the purpose and utility of public power are identical to those of human society itself. If all members of society were equal and subject to no higher power, each man would pull in his own direction as opinion or whim directed, and the commonwealth would necessarily be torn apart. The civil community (*ciuitas*) would be sundered unless there were some overseeing providence to guard public property and look after the common good. 'Every kingdom divided against itself is brought to desolation' (Matt. 12: 25), and 'where there is no ruler the people perish', as Solomon says.²⁰ Just as the human body cannot remain healthy unless some ordering force (*uis ordinatrix*) directs the

18. Vitoria's use of the term 'most natural' reflects Aristotle's concept of *autarkeia* or 'self-sufficiency' as the *telos* or 'end' of nature: 'When several villages are united in a single complete community, large enough to be nearly or quite self-sufficing, the state comes into existence, originating in the bare needs of life, and continuing in existence for the sake of the good life. And therefore, if the earlier forms of society are natural, so is the state, for it is the end of them, and the nature of a thing is its end. For what each thing is when fully developed, we call its nature . . . Besides, the final cause and end of a thing is the best, and to be self-sufficing is the end and the best' (*Politics* 1252^b28–1253^b2). Vitoria elsewhere uses the wording 'most perfect', following Aquinas (*ST* I-II. 90. 2 'for the perfect community is the *ciuitas*'; *De regimine principum* I. 1 'it follows that a communal partnership is the more perfect to the extent that it is sufficient in providing for life's necessities': compare *I On the Power of the Church* 5. 8 (footnote 58), *On the Law of War* 2. 1 §5–7.

19. Vitoria discussed the historical formation of human societies at greater length in his commentaries on *ST* II-II. 47. 10 (Vitoria 1932–52: II. 363–4); II-II. 62. 1 §21 (*ibid.*, III. 77–8); and II-II. 104. 1 §2 (*ibid.*, IV. 204–5).

20. The quotation is a conflation of Prov. 29: 2–18.

single limbs to act in concert with the others to the greatest good of the whole, so it is with a city in which each individual strives against the other citizens for his own advantage to the neglect of the common good.

Here we have, then, the final cause, and the most potent, of secular power, namely utility and necessity so urgent that not even gods can resist it.²¹

§6 [Question 1, Article 3: The efficient cause of civil power is God]

The *efficient cause of this power* can easily be deduced from the preceding argument. If, as we have shown, public power is founded upon natural law, and if natural law acknowledges God as its only author, then it is evident that public power is from God, and cannot be over-ridden by conditions imposed by men or by any positive law:

1. God the creator of all things, whose wisdom 'reacheth from one end of the world to the other with full strength and ordereth all things graciously' (Wisd. 8: 1), and 'by whom all things are ordained', as the Apostle says (Rom. 13: 1), made man by his natural condition unable to live outside society. As Cicero makes Scipio say, 'nothing is more acceptable to the deity who governs the universe and who created everything in the world than the assemblies and councils of men duly banded together which we call cities (*ciuitates*)' (*Republic* VI. 13). And if commonwealths and cities are founded on divine or natural law, so too are civil powers made by divine law, without which such commonwealths cannot survive.

2. To dispel any remaining doubt, I shall further prove this point about divine law by argument and authority. First, Aristotle asserts in *Physics* 254^b13–256^a3 that lighter and heavier bodies are set in motion by no other cause than the natural inclination to motion with which the First Mover endows them. Therefore, if God was responsible for endowing men with the necessity and inclination which ensure that they cannot live except in partnership (*societas*) and under some ruling power, we must conclude that partnership and power are themselves God-given. For things which are natural to all creatures must themselves be created by God, the author of nature, since he who gives the creatures their form and structure, as Aristotle again says, must also be responsible for the consequential things entailed by that form.

21. LS 'or rather, great necessity, which none but gods can resist'. The explanation for the remark is to be found in Aristotle's assertion that 'he who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god' (*Politics* 1253^a27–9). Soto was to translate the term into its Christian equivalent, 'angels' (Pagden 1986: 70, n. 71).

For this reason Paul teaches us that ‘whosoever resisteth the power, resisteth the ordinance of God’ (Rom. 13: 2). Therefore I conclude that *power exists in the commonwealth by God’s ordinance.*

§7 [Question 1, Article 4: The material cause of civil power is the commonwealth]

But the *material*²² cause on which this naturally and divinely appointed power rests is the commonwealth. The commonwealth takes upon itself the task of governing and administering itself and directing all its powers to the common good. This is shown by the following proofs:

1. Divine and natural law require there to be some power to govern the commonwealth, and since in the absence of any divine law²³ or human elective franchise (*suffragium*) there is no convincing reason why one man should have power more than another, it is necessary that this power be vested in the community, which must be able to provide for itself. If no one was superior to any other before the formation of cities (*ciuitates*), there is no reason why in a particular civil gathering or assembly anyone should claim power for himself over others.

2. Further, every man has the power and right of self-defence by natural law, since nothing can be more natural than to repel force with force. Therefore the commonwealth, in which ‘we, being many, are one body, and every one members one of another’ as the Apostle says (Rom. 12: 5), ought not to lack the power and right which individual men assume or have over their bodies, to command the single limbs for the convenience and use of the whole. Individuals may even risk the loss of a limb if this is necessary to the safety of the rest of the body; and there is no reason why the commonwealth should not have the same power to compel and coerce its members as if they were its limbs for the utility and safety of the common good.

3. Finally, it is prohibited by divine law to kill a fellow man, as clearly stated in the Ten Commandments. Therefore the authority to carry out capital punishment must depend on divine law. But the commonwealth has the authority to execute a man, as established by usage and custom; therefore it has this authority by divine law.

It is not a sufficient answer to say that divine law does not prohibit killing in absolute terms, but only the killing of an innocent man. The

22. *L materialis* : *naturalis P*. Boyer’s reading is guaranteed by the Aristotelian framework of fourfold causes (see footnote 6 above, and 1. 7, p. 18 below).

23. *P iure diuino* : *communi iure positio L*.

conclusion to be drawn from this argument would still be the same, because a private individual cannot lawfully kill another even if the latter is guilty of a crime. Therefore the commonwealth has an authority to take a man's life which the private man does not have, and this right cannot be founded in positive law, and must therefore depend on divine and natural law. Furthermore, positive law derives from the commonwealth, and therefore the existence of the commonwealth itself and of its power to make laws must precede the existence of positive laws; consequently it may be deduced that this legislative power itself exists in the commonwealth by divine and natural law.²⁴

[Question 1, Article 5: The material power of the commonwealth is invested in sovereigns]

Now although this power and authority we speak of belongs first of all and *per se* to the commonwealth itself, *the same authority belongs to the rulers and magistrates to whom the commonwealth has delegated its powers and offices*. And since the greatest and best of all forms of rule and magistracy is monarchy or kingship, which comes not far behind the public power of the commonwealth, it is time to investigate royal power and kingship.²⁵

There have been some writers, even among those who call themselves Christians, who have denied that kingly power or any kind of rule by a single person comes from God, affirming that all sovereigns, generals, and princes are tyrants and robbers of human liberty.²⁶ They declare themselves enemies of every system of empire and government over men other than by the whole commonwealth. To top this folly and con-

24. This sentence is omitted by L, probably because Boyer inadvertently skipped from the end of the previous sentence to the end of this one.

25. L replaces this paragraph with the sentence: 'Now since the power we speak of is principally invested in kings, to whom the commonwealth has delegated its role, it is time to discuss royal rank and power.' The following article owes a good deal to Aquinas' discussion of the matter in *ST* I-II, 105, 1 ad 2; Vitoria was to return to the question in his lecture *On Law* §136 *ad loc.*

26. As Giles of Rome pointed out, it was no less an authority than Augustine who declared that kingdoms were founded by invasion and usurpation, 'and hence such rulers are not kings, but rather thieves and robbers' (*De ecclesiastica potestate*, translated in Tierney 1988: 198-9; Augustine's passage is *De civitate dei* XIX, 15 'Of the liberty proper to man's nature and the servitude introduced by sin', *ibid.*, 11). However, this was true only before the advent of Christ; kingdoms instituted by God under the New Law were holy and just. With this in mind, Vitoria divides the following *objecta* into those relevant to the Natural and Old Laws, and those relevant to the New Law.

firm their madness, these writers even try to adduce logical arguments, or twist the words of Scripture to prove the point:

1. They say that man was born free; in the original blessed state of innocence no man was master and no man was slave. Who then has the right to reduce man, thus created free, to servitude? Men were told in the beginning, 'have dominion over the fish of the sea, and over the fowl of the air' (Gen. 1: 28); but God never said that they in turn should suffer the dominion of some other man who had violently arrogated sovereignty to himself.²⁷ Furthermore, under the law of nature we never read of any prince having been amongst the worshippers of the true God; *ergo*, etc.²⁸ Again, kingship originated in tyranny, since Nimrod, the first king, was criticized by posterity for seizing the kingship of Noah, a just man, by tyrannical means; of whom it is said that 'Cush son of Ham begat Nimrod: he began to be a mighty one in the earth; he was a mighty hunter before the Lord, and the beginning of his kingdom was Babylon' (Gen. 10: 8-10). And succeeding rulers have taken power by the same violent means as Nimrod.²⁹ Nor have the holy doctors of the Church passed over this topic in silence. Gregory the Great says: 'it is against nature for one man to wish for power, since all men are equal in natural law'. And Isidore of Seville remarks: 'possession is common to all, and liberty is the same for all in natural law' (*Etymologies* V. 4. 1).³⁰

2. But even if kingship was not prohibited before the advent of the Gospel, Christians at least were clearly set free by Christ. That seems to be what the Lord meant when he said: 'Of whom do the kings of the earth take custom or tribute? of their own children, or of strangers?'; to which Simon Peter replied, 'Of strangers', and Jesus continued: 'Then are the children free. Notwithstanding, lest we should offend them, go thou to the sea, and cast an hook, etc.' (Matt. 17: 25-7). From this passage it is argued that Christians are not obliged to pay tribute except to avoid criminal offence, in support of which the words of the Apostle are adduced: 'Owe no man any thing, but to love one another' (Rom.

27. For the argument, see Augustine, *De ciuitate dei* XIX. 15 (Tierney 1988: 11); Aquinas, *ST* I. 96 'On the dominion which belonged to man in the state of innocence' (Aquinas 1970: 102-7); and Ulpian's famous phrase 'all men are born free in natural law', *Digest* I. 1. 14 (Tuck 1979: 17-20).

28. By 'law of nature' Vitoria means the code which prevailed until the granting of Mosaic law on Sinai, a period which according to Josephus and Augustine lasted 3,644 years.

29. The point of mentioning Nimrod (see the Biographical notes), here left somewhat obscure, is explained in *On the American Indians* 2. 1.

30. Isidore's 'influential synthesis . . . was taken up by Gratian in the *Decretum* [D. 1 7] and became the basic text around which later argument centred' (Tuck 1979: 18); see also Aquinas *ST* I-II. 94. 5.

13: 8); and again, 'Ye are bought with a price; be not ye the servants of men' (1 Cor. 7: 23); and 'One Lord, one faith, one baptism' (Eph. 4: 5). Therefore it is not lawful to impose new masters on Christians.

§8 IT IS HARDLY SURPRISING that these men, who have already apostatized from God and his church corrupted by their vicious ambition and pride, should also stir up sedition against our rulers. We may cast aside their calumnies, and agree with all right-minded men that *monarchy or kingly power is not only just and legitimate, but also that sovereigns have their power by natural and divine law, not from the commonwealth or from men.*

I REPLY as briefly as I can with the proofs in favour of monarchy. Even if there were no scriptural authorities on this matter, reason alone would be able to resolve the question. Though the commonwealth has power by divine law over the individual members of the commonwealth, as has been proved (1. 4 above), it is nevertheless quite im-[possible]³¹ for this power to be administered by the commonwealth itself, that is to say by the multitude. Therefore it is necessary that the government and administration of affairs be entrusted to certain men who take upon themselves the responsibilities of the commonwealth and look after the common good. It is irrelevant whether this be a number of men, as in an oligarchy, or a single man, as in a monarchy; in any event, if the power of the commonwealth is not tyrannical but just, then the power of a monarch will be just too, for it is none other than the commonwealth's power administered through the sovereign. The commonwealth as such cannot frame laws, propose policies, judge disputes, punish transgressors, or generally impose its laws on the individual, and so it must necessarily entrust all this business to a single man.³²

But let us dismiss these false opinions by setting out the true ones:

TO THE FIRST, there can be no disagreement about the proof that sovereigns are not contrary to natural law, as these men think. Natural law is immutable, as stated by Gratian in the *Decretum* (D. 1. 7) and proved by Aristotle (*Nicomachean Ethics* 1134^b19). Therefore, if kingship were against natural law, it would follow that there has never been

31. P's text has lost a word after the negative here, probably *potest*; L supplies the latter, but introduces several inversions in the following sentences, and omits most of the text after 'It is irrelevant whether this be a number of men.'

32. Vitoria here introduces the 'contractualist' theory that the *populus* delegates power by tacit consent to its representative or vicar, *vicem gerens*. The idea had the authority of Aquinas (ST I-II. 90. 3 and 105. 1), but the difficulty of reconciling the view that *regia potestas* is simultaneously sanctioned by the people and by God is apparent (see the Introduction, pp. xix–xx).

an age or century in which justice has ruled. Yet the contrary is proved by the Old Testament, where praises are bestowed upon Melchizedek, king of Salem (Gen. 14: 18; Heb. 5: 6-10), and Joseph became chief minister of the kingdom of Pharaoh and collector of his tribute (Gen. 41: 39-57). Jacob, a just man, was given a portion of land to farm by Pharaoh; and Daniel and his companions were appointed governors of a province by Nebuchadnezzar (Gen. 47: 6-28; Dan. 2: 48-9). These, as truly holy men, would never have accepted these posts if they had shared the view that kingship is a form of tyranny.

Furthermore, the laws and conditions for kings who were to rule over the children of Israel are set out in Deuteronomy (Deut. 17: 14-20). These in no way prohibit them from setting up a king over themselves; indeed, the Lord grants them licence and leave to do so, only warning them not to elect a foreigner as king. And in the same passage it is commanded that the king shall abide by the statute of the high priest, on pain of his life. It does not matter, therefore, whether the sovereign be the priest or the king, insofar as they have the same power. And again, as is clear in Deuteronomy, the Lord appointed judges [from the Levites] with the power of life and death.³³ In the books of Kings, some kings are created by God himself, and others are elected at his command; God would never have done this if it was against natural law. And the Maccabees are universally recognized as brave and righteous men, and yet they either seized the throne of their people by force, or claimed it from just causes.

One may therefore say that it is wholly absurd to suppose that something which is expedient for the administration of human affairs – such as kingship, as I have partly proved and as I will shortly establish more clearly³⁴ – can be contrary to natural or divine law. As Job wisely said, ‘God doth not jealously³⁵ cast away the mighty, although he himself is mighty’ (Job 36: 5).

TO THE SECOND, nor is the argument about ‘evangelical liberty’ an impediment to regal power, as these ignorant and seditious fellows never tire of instilling in the ears of the ignorant plebs. As I shall show elsewhere, nothing which is permitted by natural law is prohibited in the gospels (*II On Church Power* 1; *On the Law of War* 1. 1); and this is

33. *P* ut patet in levit. et deutero. The text is corrupt.

34. This phrase is omitted by *L*. The reference is to 1. 8 below.

35. *invidus* : *invidos* *P* *timidus* *L*. The citation from Job is based on a doubtful reading; a more likely rendering of the Hebrew is ‘Behold, God is mighty, and despiseth not any.’

particularly the case with evangelical liberty. If it was lawful for nations and civil societies to set up sovereigns for themselves before the preaching of the Gospel, it is unthinkable that it should be unlawful after it. And if sovereigns were not legitimate rulers, it is certain that Christ's apostles would never have enjoined us so earnestly to render unto Caesar what is Caesar's. Paul can mean nothing else than this when he says in Rom. 13: 1: 'Let every soul be subject unto the higher powers, for there is no power but of God'; and in the next verse, 'Whosoever therefore resisteth the power, resisteth the ordinance of God, and they that resist shall receive to themselves damnation.' And he continues, a little further on: 'For he is the minister of God, a revenger to execute wrath upon him that doeth evil; Wherefore ye must needs be subject, not only for wrath, but also for conscience sake, for they are God's ministers, attending continually upon this very thing' (13: 4). And again, in Tit. 3: 1, 'Put them in mind to be subject to principalities and powers'; and in 1 Tim. 2: 1–2, 'I exhort, therefore, that first of all supplications, prayers, intercessions, and giving of thanks be made for kings, and for all that are in authority, that we may lead a quiet and peaceable life in all godliness and honesty.' And in 1 Pet. 2: 13–14, 'Submit yourselves to every ordinance of man for the Lord's sake, whether it be to the king, as supreme, or unto governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well, for so is the will of God; as free, and not using your liberty for a cloke of maliciousness, but as the servants of God; honour all men, love the brotherhood, fear God, honour the [king].'

LET US CONCLUDE by leaving these matters and go back to clarify a point I mentioned before, namely that *royal power is not from the commonwealth, but from God himself*, as Catholic theologians believe. It is apparent that even though sovereigns are set up by the commonwealth, royal power derives immediately from God. For example, the pope is elected and crowned by the Church, but nevertheless papal power does not come from the Church, but from God himself. In the same way, the power of the sovereign clearly comes immediately from God himself, even though kings are created by the commonwealth.³⁶ That is to say, the commonwealth does not transfer to the sovereign its power (*potestas*), but simply its own authority (*auctoritas*); there is no question of two separate powers, one belonging to the sovereign and the other to

36. The paragraph up to this point is considerably abbreviated in *L*, which among other things leaves out the parallel with papal elections.

the community.³⁷ And therefore we must say about royal power exactly what we have asserted about the power of the commonwealth, namely that it is set up by God and by natural law. This agrees with Holy Scripture, and with common practice, which calls kings 'ministers of God' not 'ministers of the commonwealth'. And divine wisdom, speaking through the mouth of Solomon, says: 'By me kings reign, and princes decree justice' (Prov. 8: 15). And the Lord answered Pilate: 'thou couldest have no power at all against me, except that it were given thee from above', that is, from heaven (John 19: 11).

Therefore those authors who concede that the power and jurisdiction of the commonwealth derives from divine law but deny that the same is true of regal power appear to be in error. To be sure, if men or commonwealths did not derive their power from God, but formed an agreement to set up a power over themselves for the public good, then this would be a [human] power,³⁸ such as the power which members of a religious order ascribe to their abbot. But it is not so. A civil community (*ciuitas*) is constituted by all its citizens, and thus the commonwealth has the power to administer and govern itself and its citizens in peace, and to compel any who breach that peace and contain them in the bounds of civil duty.³⁹

§9 Question 1, Article 6: Non-Christians have legitimate sovereigns

ALTHOUGH THESE THINGS ARE AS WE HAVE SEEN, there is a possible doubt whether the same is true of the powers by which non-Christian commonwealths are governed, and of whether there can be said to exist legitimate sovereigns and magistrates among the pagans. It seems not:

1. If a Christian apostatizes, the laws state that he forfeits all public power and is rightfully deprived of that power on the grounds of his apostasy. By the same argument impiety or unbelief also invalidates any kingship or power amongst people who are not Christians.

37. This distinction between *auctoritas* and *potestas* is an attempt to meet the problem posed by asserting that civil power comes simultaneously from God and from the people (see the Introduction, pp. xix–xx). In the margin of MS P, the copyist adds the note: 'att^{nde} l. I de const^t princ.', a reference to *lex Digna* (Codex I. 14. 4) by which Accursius and other civilists answered the *Princeps legibus solutus* conundrum (see the Glossary, s.v.).

38. *L* ab hominibus : ab omnibus P.

39. *L* reads 'But it is not so, for power is set up in the commonwealth, even against the will of all its citizens, of administering itself, for which office civil kings (*ciuiles reges*) were constituted.'

Richard Fitzralph, archbishop of Armagh, a man of otherwise blameless character and intelligence, certainly argues in his *De paupertate Saluatoris* that not merely unbelief but any mortal sin impedes any kind of power or dominion (*dominium*) or jurisdiction, either public or private, in the mistaken belief that the true title and foundation of all power is grace. Nevertheless, the authorities and arguments which he adduces to try to prove the assertion are so weak and unworthy of consideration for the solution of this problem that I shall not waste time over them.⁴⁰

TO THIS ONE MAY THEREFORE ANSWER that there can be no doubt at all that the heathen have legitimate rulers and masters. This is shown by the Apostle's strict precepts in the passages adduced in the previous article concerning obedience to secular powers, which in his day were undoubtedly all non-Christian. And, as I have said, Joseph and Daniel served as ministers and governors to pagan rulers. So neither Christian sovereigns nor the church may deprive non-Christians of their kingship or power on the grounds of their unbelief, unless they have committed some other injustice.

§10 [Question 1, Article 7: Proof of the initial proposition that a legitimately constituted power cannot be abolished by the popular consensus]

These, then, are the three main causes, final, efficient, and material, of public secular power, from which we may easily deduce its *form*. This is nothing other than the essence of power itself, which may be expressed in the following definition, as formulated by the authorities on the subject: *public power is the authority or right of government over the civil commonwealth*.⁴¹

THE PROOF OF THE PROPOSITION which initially opened this question is thus easily established from what has been said above, at least as far as public power is concerned; for I have shown that *public power is of God*, and that as such it is *just and legitimate*. And from this follows the proof of the last part of the proposition, where I said that *power of this kind can not be abolished even by the consensus of men*. If a man cannot give up his right and ability of self-defence and of using his own body for his own

40. Vitoria was to return, however, to a full consideration of the heretical views of Fitzralph, which were shared by Wycliff and Huss (see the Introduction, pp. xvi–xvii), ten years later in *On the American Indians* 1. 1.

41. *L.* has a truncated and less logical version of the first part of this paragraph. The 'formal' is the last of Aristotle's fourfold causes (see footnote 6 above).

convenience because this power belongs to him by natural and divine law, by the same token the commonwealth also cannot by any means be deprived of its right and power to guard and administer its affairs against violent attack from its enemies, either from within or from without. And this it can only do by assuming public powers. Therefore, even if all the members of the commonwealth were to agree to share this power freely among their number without restraint of law or obedience to magistrates, their agreement would be null and void as contrary to natural law, which the commonwealth of itself cannot abolish.

§11 [Question 1, Article 8: Monarchy is the best form of government]

FROM THE FOREGOING we may infer an important corollary concerning those who live under the rule of a single monarch. Civil societies which have no sovereign and are ruled by a popular administration often boast of their liberty, accusing other civil societies of being the servile bondsmen of sovereigns. There are even some within this kingdom who subscribe to this view.⁴²

Against this stupid and ignorant idea I offer my first corollary, which is that *there is no less liberty under a monarchy than under an aristocracy or timocracy*. The latter division of types of government is given by Aristotle in the third book of his *Politics* (1279^a33–40), where he distinguishes the rule of one man, or *monarchy*, from the rule of a group of nobles (*optimates*), or *aristocracy*, and from popular rule or rule of the multitude, or *timocracy*.⁴³ I say that there is no greater liberty in one than in another of these.

42. This sentence is omitted in *L*. 'This kingdom' must mean Castile. Vitoria can only have had in mind the republican views of some supporters of the *Comunero* revolts of 1520–1, such as the Trinitarian friar Alonso de Castrillo, whose *Tratado de república con otras historias y antigüedades* (Burgos, 1521) propounded the view that men were 'created equal and free in the possession of the world', that any monarchical power is 'unnatural tyranny', and that the best constitution is *la libertad del pueblo* ('liberty of the people') with freely elected fixed-term magistracies (Maravall 1960: 235–45).

43. *P* *tymochratico*, *timocratiam* : *democratico*, *democratiam* *L* *passim*. Vitoria's use of the term *timocracy* ('constitution based on a property-qualification, *time*') is correct; Aristotle used *democracy* for the 'perversion' or corrupt form of timocracy, as *tyranny* is the corruption of monarchy, *oligarchy* of aristocracy (*Nicomachean Ethics* 1160^a31–^b22). Aquinas muddled the distinction, using the word *democracy* for the desirable form of *status popularis* (*ST* I-II. 95. 4; *Lect. in Nic. Eth.* VIII, lect. 9–10; *In Polit.* II, lect. 5, 6, 14–16). Though Vitoria seems to have taken pains to avoid this error (see *On Law* §136, p. 197), his printers and editors have been more careless.

I demonstrate the major premiss from what has been said already: under any type of government, each private individual is subject to the public power, which he is bound to obey, whether that power resides in one man or in a number of men or in the whole multitude. This power is the same, whether it be exercised by one man, or by the whole community or commonwealth, or by the nobles; there is clearly no greater liberty in being subject to three hundred senators than to one king. Indeed, men who are subject to the decree and government of the crowd have, by that token, all the more masters – unless anyone is so mad as to believe himself a slave when he obeys one wise king, and fancy himself free when he is subject to a barbarous mob. Was not obedience to the absolute emperor Octavian far preferable to obedience to the Triumvirate or the Decemvirate? Especially when you consider that the constitution of the Roman republic, which these fellows crack up as the very cynosure of liberty, amounted in the end to nothing more than obedience to the edict of a single praetor, who did not even administer the republic like a king, but seized and harried the individual citizens from pillar to post at the whim of his caprice, or rather of his lusts. And yet these wretched men, harried as they were by a contemptible homuncule, swore that they were free!

For my part I prefer to believe, with all the most honoured and wise peoples of earth, that monarchy is not merely equitable and just, but also of all forms of government the most excellent and convenient to the commonwealth. As I have argued above, the purpose of every commonwealth and power is the sociable intercourse (*conuersatio*) and companionship of its members. These are most preserved by peace and mutual love; and nobody can be unaware how much more effective monarchy is when it comes to the preservation of peace. In commonwealths where many men share government, it is inevitable that rivals for office should spend their efforts in quarrels and seditions, tearing the commonwealth apart with different policies. As the poet says, 'trust is impossible between partners in power'; and as the Lord said through the mouth of the prophet, 'many pastors have destroyed my vineyard' (Jer. 12: 10).⁴⁴

THEREFORE the best form of government is monarchy, just as the universe is controlled by a single Lord and Ruler. It seems there is also a

44. The previous two paragraphs are reduced to a single sentence in *LS*, which remove the whole of Vitoria's satirical reference to the Roman imperial and republican constitutions, with its evident allusion to contemporary humanist eulogies of antique liberty (Skinner 1978: I, 71–88, 140–80). The 'poet' referred to at the end of the paragraph is Lucan (*De bello ciuili* I, 92–3); the quotation was a topic in canonist and juristic discussions of monarchy (Maravall 1983: 87–96).

mixed constitution combining the three forms of government, and this would seem to be the sort we have in Spain.⁴⁵

§12 [Question 1, Article 9: The whole commonwealth may be punished for the sin of its monarch]

A SECOND COROLLARY may be inferred from the preceding arguments: *the whole commonwealth may lawfully be punished for the sin of its monarch*. If a sovereign wages an unjust war against another prince, the injured party may plunder and pursue all the other rights of war against that sovereign's subjects, even if they are innocent of offence. The reason is that once the sovereign has been duly constituted by the commonwealth, if he permits any injustice in the exercise of his office the blame lies with the commonwealth, since the commonwealth is held responsible for entrusting its power only to a man who will justly exercise any authority or executive power he may be given; in other words, it delegates power at its own risk. In the same way, anyone may lawfully be condemned for the wrongdoings of his appointed agent.⁴⁶

§13 [Question 1, Article 10: No war which causes more harm than good to the commonwealth can be legitimate]

THE THIRD COROLLARY is that *no war is legitimate if it is shown to be more harmful than useful to the commonwealth*, even if there are titles and reasons in other respects which make the war a just one. The proof is as follows: since the commonwealth has no power to wage war except for the protection and benefit of itself and its affairs, it follows that where these are prejudiced and damaged rather than promoted by war, that war will be in itself unjust, whether declared by the sovereign or by the commonwealth.

I would go further: since any commonwealth is part of the world as a whole, and in particular since any Christian country is part of the Christian commonwealth, I should regard any war which is useful to one commonwealth or kingdom but of proven harm to the world or Christendom as, by that very token, unjust. Thus if Spain declares war

45. This sentence does not appear in *L*. The mixed constitution was praised by Aquinas (*ST* I-II. 95. 4 'regimen commixtum est optimum'; I-II. 105. 1 'optima politia bene commixta'); Vitoria was to make further comments in his lecture on the latter passage, *On Law* §136, p.198.

46. This sentence is omitted in *L*.

on France for reasons which are otherwise just, and even if the war is useful to the kingdom of Spain, if the waging of the war causes greater harm and loss to Christendom – for example, if the Turks are enabled in the mean time to occupy Christian countries – then hostilities should be suspended.⁴⁷

The foregoing suffices for the explanation of the first part or conclusion.

[Question 1, Article 11, a and b: The kingship and kingdom of Christ]⁴⁸

But I have spoken so much about kings and kingship that there is a danger that my discussion will appear to be more philosophical than theological. I have decided that it will not be amiss, therefore, if I insert here a discussion of *the kingdom of Christ*, who is called the Lord and King of kings. I cannot follow up all the possible aspects of this topic in the present context, but only the questions of *the right by which He was king*, and *whether His kingdom exists for the same reasons as those of temporal rulers*.

- [A] ON THE QUESTION OF CHRIST'S KINGSHIP the authorities hold different opinions. Some say that Christ our Lord and Redeemer was king of the Jews not only by the Hypostatic Union or by the fact that He was the Messiah (since on these counts He was king of the whole world), but by hereditary right and by His natural birthright. For this idea see Fitzralph, *Summa in quaestionibus Armenorum* 5. 15–16,⁴⁹ who holds that Christ was king of the Jews by birth according to His human nature, and not merely by the Hypostatic Union. He affirms that the dignity of kingship devolved upon Him by succession through the Virgin Mary, according to the law of female inheritance given in Num. 27 in the case of Zelophehad's daughters, where it is said: 'If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter. And if he have no daughter, then ye shall give his inheritance unto his father's brethren. And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family, and he

47. For Vitoria's views on the Franco-Spanish wars, compare *On the Law of War* 5. 2, footnote 45, and Appendix A, Letter 4.

48. This article, which falls into two parts, is unique to *P* (see footnote 2 above), and, as the copyist explains at the end of it, was absent from the *originale*. It has been edited by Beltrán de Heredia (Vitoria 1952: 95–101) and Urdániz (Vitoria 1960: 168–78).

49. Fitzralph 1512: fols. xxxiv^v–xxxv.

shall possess it' (Num. 27: 8–11). So Christ could truly be called the king of the Jews on His mother's side. Fitzralph proves this by many arguments:

1. The Messiah is often called 'king' by the prophets. It is said in the Psalms: 'The king shall joy in thy strength, O Lord' (Ps. 21: 1); and 'I speak of the things which I have made touching the king' (Ps. 45: 1); and 'Give the king thy judgments, O God . . . He shall have dominion also from sea to sea' (Ps. 72: 1–8). And in Isaiah it is prophesied: '[For unto us a child is born, unto us a son is given: and the government shall be upon his shoulder: and his name shall be called Wonderful, Counsellor, The mighty God, The everlasting Father,] The Prince of Peace; of the increase of his government and peace there shall be no end' (Isa. 9: 6–7); and 'the Lord is our judge, the Lord is our lawgiver, the Lord is our king' (Isa. 33: 22). So too Daniel says: '[And there was given him dominion, and glory,] and a kingdom' (Dan. 7: 14); and Zechariah, '[behold,] thy King cometh unto thee' (Zech. 9: 9). All these things were confirmed by the angel Gabriel when he said to Mary: 'and the Lord God shall give unto him the throne of his father David; and He shall reign over the house of Jacob for ever' (Luke 1: 32–3). It is not enough to reply that the title 'king' in these cases signifies a merely spiritual rule and the giving of spiritual laws; on that argument Moses and Samuel would also have to be called 'kings'; or rather, the Messiah ought to have been called 'prophet', or 'priest', or 'teacher', not 'king'.

2. AND AGAIN, John tells us that Pilate asked Him, 'Art thou a king then?'; and Christ answered, 'Thou sayest that I am a king; to this end was I born, and for this cause came I into the world, that I should bear witness unto the truth' (John 18: 37), from which words it would appear that Christ confessed that He was a king in the sense in which Pilate used the word.

3. If He were only a king in terms of spiritual power, or by temporal power specially granted to Him, then since this power extends over the whole world there is no reason why He should be called king of Israel rather than, say, king of the Egyptians, or of the Romans. Instead of saying He will sit 'upon the throne of David', one might just as well say 'on the throne of Caesar Augustus' or 'on the Roman Capitol'. But of course nothing of the kind is said; it is quite explicitly stated in the Psalms, 'Yet has He set me up as king upon his holy hill of Zion' (Ps. 2: 6);⁵⁰ and in Luke the angel says He shall reign 'over the house of His

50. Vitoria quotes the Vulg. ('Ego autem constitutus sum rex ab eo super Sion montem sacrum eius'); the AV translates, more correctly, 'Yet have I set my king upon my holy hill of Zion.'

father David (Luke 1: 32–3); and in Matthew, ‘for out of thee shall come a Governor, that shall rule *my people Israel*’ (Matt. 2: 6). And Zechariah prophesied: ‘Rejoice greatly, O daughter of Zion; shout, O daughter of *Jerusalem*: behold, thy King cometh unto thee’ (Zech. 9: 9). And John writes ‘Blessed is the King of *Israel* that cometh in the name of the Lord’ (John 12: 13).

4. In John’s account ‘the Jews cried out, saying, If thou let this man go, thou art not Caesar’s friend’, and then added the reason, ‘whosoever maketh himself a king speaketh against Caesar’ (John 19: 12). It is clear they were talking about the kingdom of Judaea, and it does not seem likely the Jews would have invented this without some reason, namely because they had heard it either from Him or from His disciples. The same thing is implied earlier, when John tells us ‘that they would come and take him by force, to make him a king’ (John 6: 15); it does not seem likely they would have tried to do this unless it was for the reason just mentioned, namely that He called Himself king.

5. When the wise men came looking for Christ they said ‘Where is he that is born King of the Jews?’ (Matt. 2: 2).

6. The same thing seems to be implied by Christ’s words, ‘when they that received tribute money came to Peter, and said, Doth not your master pay tribute?’, and when Christ was come into the house he said to Simon Peter, ‘What thinkest thou, Simon? of whom do the kings of the earth take custom or tribute? of their own children, or of strangers?’, and he replied, ‘Of strangers’, and Christ said to him, ‘Then are the children free; notwithstanding, lest we should offend them, go thou to the sea, and cast an hook, and take up the fish that first cometh up; and when thou hast opened his mouth, thou shalt find a piece of money: that take, and give unto them for me and thee’ (Matt. 18: 24–7). By this Christ gave us to understand that He was the son of a king, and therefore free of tribute.

ON THE OTHER HAND, despite all these arguments, it is clearly no more than a vain and perverse Jewish error to say that Christ was king by carnal succession. The Jews were waiting for a king to be born of a noble house who would rule over them temporally and restore the kingdom; they said that all these prophecies referred to natural things, understanding them in the carnal sense. But according to Paul, ‘the letter killeth, but the spirit giveth life’ (2 Cor. 3: 6). Christ did not come into the world for the sake of the temporal commonwealth; He came not to send peace on earth, but a sword (Matt. 10: 34), which is to say, the end of all temporal commonwealths.

I REPLY, rejecting the vanity of these Jews who cling to their darkness despite the effulgent sunlight of revelation, that the kingdom of Christ was more excellent than any the Jews could imagine. He was monarch of the universe not by succession, but by the gift of His Father through the Hypostatic Union; and His kingship was not of the same kind as that enjoyed by earthly rulers. I believe this is the opinion of St Thomas Aquinas in the passages where he discusses the difference between Christ's kingdom and other kingdoms (*ST* III. 8. 1–3; *De regimine principum* III): first, because the kingdom of Christ embraces souls, whereas other kingdoms rule only over bodies; and other kingdoms concern the things of this world, while Christ's embraces celestial things also, as He Himself said: 'All power is given unto me in heaven and in earth' (Matt. 28: 18). Second, it is higher in its purpose and more immediate to human needs, since the principal and immediate aim of other kingdoms is human happiness and peace within the commonwealth, and spiritual salvation is less attended to; but Christ's kingdom, on the contrary, has as its first aim the salvation of souls, even though it has human happiness as a secondary aim. Third, earthly kingdoms are of this moment only, whereas Christ's is present and future, for 'of his kingdom there shall be no end' (Luke 1: 33). Fourth, other kingdoms exist by the consent of the people or by succession, but Christ's kingdom was given Him immediately by God; this seems to be shown by the words of the angel to Mary, who said: 'the Lord God shall give unto him the throne of his father David' (Luke 1: 32), which clearly shows that his kingship belongs to him by God's gift, not by any other right. So too the Psalm says 'Yet He has set me up as king, etc.' (Ps. 2: 6). Furthermore, if He had His kingship by hereditary right it would have ended with His death; and yet it is said, 'of his kingdom there shall be no end' (Luke 1: 33). Also, if His kingship was due to Him by hereditary right, whether through Mary (as Fitzralph says) or through Joseph, He would not have been king while they were alive, since the son of the king cannot be king while his father or mother from whom he inherits the throne is alive. And again, Deuteronomy teaches that 'thou mayest not set a stranger over thee as king, which is not thy brother' (Deut. 17: 15); though if a woman were to succeed to the kingdom of the Jews, she could marry a foreign husband, and he would be king, contrary to this law; or she could marry a first-born Benjamite or Levite, and when her son came to rule the throne of Judah would pass to the tribe of Levi or Benjamin.⁵¹

51. The priestly tribe of Levites had 'no part nor inheritance with Israel' (Num. 1: 47; Deut. 10: 8–9, 18: 1), while the Benjamites were under a curse and, like the Levites, were not numbered among the Israelites (Judg. 20–1; 1 Chr. 21: 6).

This kingdom, then, was of a different kind from temporal kingdoms. This is clear, because according to Aristotle, different political constitutions (*politiae*) are defined according to their different purposes and methods of government (*Politics* 1278^b6 – 1279^b10). Therefore, since the laws and purposes of Christ's polity are different from those of other polities, it follows that His is of a different species from the others. The purpose of Christ's kingdom is sufficiently explained by the passage in the second Psalm, where the Messiah says, speaking in His own person, 'Yet has He set me up as king', and then adds 'I will preach His decree' (Ps. 2: 6), which defines the purpose of Christ's kingdom as instructing and ruling the human race in the decrees of God. And the same meaning is clear in the verse in Matthew 27 which He spoke to Pilate, when He said 'Thou sayest that I am a king; to this end was I born, and for this cause came I into the world, that I should bear witness unto the truth' (John 18: 37); as if to say, 'Although I am, as you say, a king, do not suppose that I am a king to rule in temporal things; I am rather a king to preach the truth.' And He also says in John: 'My kingdom is not of this world' (John 18: 36), by which He meant two things: first, that He did not have His kingdom of this world, that is from His parents, and second, that it was not of the same form or type as the kingdoms of men.

As for Fitzralph's proof from authority concerning the daughters of Zelophehad in Num. 27, it may be easily answered with two arguments. First, the law [of female succession] itself was not observed in the case of kingship, as Scripture shows, since no daughter ever succeeded to the throne, the reason being that the people of Israel sought and were given a king that he might 'go out before them and fight their battles' (1 Sam. 8–9), and this was a task no woman could fulfil. Second, it is by no means proven that the Virgin Mary was related by blood to the kings of Israel; nor is this clear in the case of Joseph. Even if it were proved, Christ would not on that account alone have been king.

TO THE FIRST ONE MAY THEREFORE SAY that we do not deny that Christ had power in temporal things as well; but He did not have it from His parents, nor for temporal purposes alone, but chiefly for spiritual ends.

TO THE SECOND, it is obvious from the foregoing discussion that Christ's answer was quite clear: He did not deny that He was king, but He denied the form and purpose of kingship.

TO THE THIRD ONE MAY SAY that, although Christ had come for the sake of all men, and was to be the monarch of all things, as will be explained in a moment, nevertheless He came, spiritually speaking, for 'the [lost] sheep of the house of Israel' (Matt. 10: 6, 15: 24; Acts 13: 46; Rom. 15: 8).

TO THE FOURTH, it is obvious from the foregoing that we do not deny He was king of the Jews; as for the argument from John 6 to the effect that He did not wish to be king, we admit only that He did not wish to use the temporal things of kingship, because they did not conduce to the purpose of His kingdom – indeed, they hindered that purpose.

TO THE FIFTH ONE MAY SAY that the wise men clearly understood the prophecy in its true and relevant sense, unlike the Jews and others who make this point; for they looked for Him and found Him laid in a manger in a humble stable, and yet this did not deter them from honouring Him as a king, as John Chrysostom says in his *Homilies on Matthew's Gospel*.

TO THE SIXTH ONE MAY SAY that there are various interpretations of this passage, but for the present purpose it will suffice to say that Christ wished to establish by his words the fiscal independence of the Church and ecclesiastical liberties. That is, we admit that He wished to show that He was not obliged to pay [secular taxes]; but this was not because of succession, but by God's gift through the Hypostatic Union.

[B] ON THE SUBJECT OF THE KINGDOM OF CHRIST we must note that, according to Aquinas, Christ had power also according to his humanity (*De regimine principum* III).

1. This is clear from His words in Matthew: 'All power is given unto me in heaven and in earth' (Matt. 28: 18). This is interpreted by Jerome, Hrabanus Maurus, or Remigius of Auxerre as referring also to His human nature, according to the words of the prophet, 'Thou madest man to have dominion over the works of thy hands' (Ps. 8: 6). Augustine also interprets the words of the Apostle, 'For he hath put all things under his feet' (1 Cor. 15: 27), as referring to Christ. That these things belonged to Christ's kingdom, St Thomas remarks, in Chapter 12 of the work cited above, that 'it is sufficiently clear that Christ's dominion (*dominium*) was ordained for the salvation of souls and for spiritual goods, but that does not preclude His having power over temporal things, to the degree that they concern spiritual ones'.

2. In the same passage Aquinas says that Caesar Augustus was the lieutenant of Christ, who was the true monarch.⁵² In Chapter 14 he says that Christ's monarchy began at the moment of His nativity, as a sign of

52. Vitoria was to reject this argument outright when he returned to the question of Christ's kingship in *On the American Indians* 2. 1. Vitoria was unaware that Aquinas was responsible only for Book I and the first four chapters of Book II of *De regimine principum*; the rest was added by Ptolemy of Lucca. If Vitoria had known this, he might have been less surprised by the inconsistencies which he shortly detects between this work and the *ST*.

which He was attended by angels (Luke 2: 13–14), adored by shepherds (Luke 2: 8–20), and visited by wise men (Matt. 2: 9–11). In Chapter 15 he explains that although He was lord of the universe, He ordained His rule for the spiritual life, according to the words in John: 'I am come that they might have life, and that they might have it more abundantly' (John 10: 10). In Chapter 16 he says that Constantine was called by the Holy Spirit to make a donation ceding dominion (*dominium*) to St Sylvester, 'to whom temporal sovereignty and dominion properly belonged *de iure* insofar as is required for the spiritual rule of souls', as is acknowledged and recognized in some countries today and should be acknowledged in the whole world.⁵³

3. Although St Thomas never for a moment dreamed that Christ had His kingdom by way of succession or in the way other kings have their kingdoms, in *ST III*. 59. 4, where he discusses the power of Christ, he proves that Christ had power of jurisdiction over all human affairs:

Whoever is entrusted with the principal is also entrusted with the accessory. All human affairs are ordained for the principal purpose of blessedness, which is eternal salvation; and men are admitted to or excluded from eternal salvation by the judgment of Christ, as is apparent from Matt. 25: 31–46. Hence it is evident that all human affairs fall under Christ's power of jurisdiction.

4. Aquinas further adduces the passage in Daniel which says 'And there was given him dominion, and glory, and a kingdom' (Dan. 7: 14; see *ST III*. 59. 4 *in c*) as referring precisely to this power.

BUT ON THE OTHER HAND in the whole of *ST III* Aquinas never mentions any other sort of temporal power of Christ's, even though his professed subject is Christ. All other theories are therefore to be utterly rejected as delirious dreams.

Indeed, I cannot believe that when St Thomas wrote *ST III* he was a partisan of the fantastic notion that emperors are vicars of Christ in temporal matters, even though he said this in his work *De regimine principum*, where he also wrote that all those who obtained the imperial throne without the consent of the Roman Church were tyrannical oppressors. At any rate, I think this is untrue of properly temporal power; if true, it was either because the Christian people withheld its consent, or because temporal dominion (*dominium*) sometimes belongs

53. The reference is to the so-called Donation of Constantine. In implying that some countries refuse to 'acknowledge' the *de iure* plenitude of papal power, Vitoria appears simply to be directing venom against Protestant princes, not attempting to deny that the Donation was a forgery (compare *I On the Power of the Church* 5. 1).

to the pope extraordinarily, for reasons of spiritual government. If emperors and kings are said to be 'vicars' of Christ and His successors, it is in the sense that Christ in His capacity as Messiah or the pope in his capacity as His vicar have been given the power of using temporal things and kingdoms insofar as it is necessary for their purposes and office, that is, for the government of the Church. In either case they would have some power over kings and emperors; but I do not believe that the latter receive their absolute (*meram*) temporal power from the pope.

On the point that Christ did not have His kingdom by succession alone, beth Nicholas of Lyre and Nicholas de Gorran in their commentaries on the Bible agree. Whoever wishes to say that the parents of Christ were true kings must also argue that the Maccabees were tyrants who seized the throne while its occupants were still alive; yet St Thomas in *De regimine principum* 3 says they had true imperial rule and dominion, despite being of the priestly tribe, because they merited power through their zeal for their fatherland and for the Law.

It is also relevant to this argument that our Lord, when asked by a young man 'Master, speak to my brother, that he divide the inheritance with me', replied: 'Man, who made me a judge or a divider over you?' (Luke 12: 13–14). By this He seems to have denied that His power included temporal jurisdiction; see St Antonino's *Summa* 1. 3–6, Henry of Ghent's *Quodlibet* 6. 22.⁵⁴

As for the passage in Daniel 7, the *Glossa ordinaria* on Dan. 2 and 7, and Paul of Burgos' *Scrutinium Scripturarum* l. 7. 1 in his commentary on the relevant passage, give a thorough-going exposition of the topic of the spiritual kingdom of Christ, showing that He has '[devoured,] trodden down, and broken in pieces' all the kingdoms (Dan. 7: 23) not by battles and seizure of their temporal powers, but by extirpating the idolatry which held the four evil kingdoms (Dan. 7: 17) under tyrannical sway. As Mantuan wrote in his reply to a certain Jew, it takes a far greater power to make men change their gods than to make them change their rulers.

*The above text on the kingdom of Christ was not in the written relection, since the professor delivered a different and better version from memory. But when I came to make my copy, this was the version I received, though it does not, perhaps, match the style of what goes before it.*⁵⁵

54. P Joh. de gandavo. The reference is unclear; there seems to be nothing relevant in Henry of Ghent's *Quodlibet*.

55. This paragraph is bracketed in the MS, and a marginal note states: 'These words are the copyist's' (*Librarius loquitur*).

[Question 2, Single Article: A monarch may be appointed over the whole of Christendom by the majority of Christians]

§14 MY SECOND MAJOR CONCLUSION in this discussion is that, just as the will of the majority within a commonwealth may set up a king even if the rest oppose him, so the majority of Christians may rightfully appoint a universal monarch against the opposition of the minority.

1. The first step of this proposition is clear enough from what has been said above. If the commonwealth can for its own utility mandate its power to a single man, then it is clear that the dissent of one person or a handful of men must not be allowed to prevent the other members of the commonwealth from making provision for the public good. If unanimous consensus were required (which is hardly ever obtainable in a multitude), there would be no adequate way of providing for the best interests of the commonwealth. Therefore it is sufficient that the majority agree on one candidate for there to be a legal election. This is also proved by practical experience. When there are two dissenting parties in the administration of the commonwealth, if each holds contradictory opinions, one of the two must necessarily prevail; but in this case the opinion of the minority should clearly not prevail, and therefore the opinion of the majority must be followed. Besides, if complete consensus were required for choosing rulers, why not also for rejecting them? Should any greater consensus be required for a positive action than for a negative one?

2. The second step of the proposition is that such a king is above the whole commonwealth. Though this matter has provoked philosophers to wordy disagreement, my proof is brief: if the commonwealth were above the king, this would be timocratic or popular rule where 'the people becomes a monarch', so to speak.⁵⁷ In other words, the common-

56. LS add 'whom all rulers and nations are thereafter bound to obey'. On the election of kings see also *On the American Indians* 3. 6, and compare Vitoria's commentary *In ST II-II*. 62. 1 §21 (Vitoria 1932–52: III. 77–8), and 104. 5 (*ibid.*, V. 212). On universal monarchy, see Pagden 1990: 4–6.

57. The latter half of this sentence, omitted by L, is a quotation of Aristotle, *Politics* 1292^a4–18: 'A fifth form of democracy is that in which not the law, but the multitude, have the supreme power . . . Then demagogues spring up, for *the people becomes a monarch*, and is many in one . . . and grows into a despot; this sort of democracy is to other democracies what tyranny is to other forms of monarchy.' But Aristotle argues elsewhere that constitutional democracy is the best form of government for free and more excellent peoples (1288^a8–14), whereas monarchy is appropriate to foreigners and Asiatics who are 'more servile in character than Hellenes . . . and by nature slaves' (1285^a19–22). See *On Law* §136, p. 198.

wealth (that is the populace), not the king, would be the effective prince, and in Aristotle's scheme this could no longer be described as a true monarchy or rule by a single prince (*Politics* 1285^a5, 1286^a2–3). Therefore the commonwealth can give to a single man not merely power above any individual (*supra singulos*), but above all its citizens together (*supra omnes simul*). That is what it is for a prince to have royal power, not some other kind such as aristocratic or timocratic power. It follows that the king is above all the citizens. Finally, in law there can be no appeal against the king to the commonwealth; therefore the commonwealth is not higher than the king.

3. The third step of the proposition is that the majority of Christians can elect a monarch. The proof is as follows: Christendom is in some sense a single commonwealth and a single body, according to the Apostle's words: 'we, being many, are one body in Christ' (Rom. 12: 4–5). Therefore Christians have the power to preserve and guard themselves, and to order the best method of defence against their enemies. If it became clear, therefore, that it was more expedient for Christendom and the commonwealth of the faithful to have a single prince for their defence against tyranny or defeat by the infidel, all Christians might elect a single universal monarch. And since the will of the majority in a commonwealth is equivalent in power to the will of the whole commonwealth, as explained in the first step of this argument, it follows that the majority of Christians have the same power to elect their monarch.⁵⁸ Furthermore, temporal ends are subordinate to and directed towards spiritual ends (as I shall show in more detail in another place); if monarchy is the most expedient means for the defence and propagation of the Faith and Christian religion, I see no reason why he whose concern it is to look after the spiritual good of Christendom should not compel Christians to elect a single prince. After all, the rulers of the Church take it upon themselves to depose otherwise legitimate princes who are heretics for the good of the Faith. Why, then, should the Church not compel Christian rulers to elect a single monarch for the good of the Faith, even if some dissent from the choice, especially when the Faith is placed in danger by those very princes' own dissent?⁵⁹ The human race once had this power of electing a single supreme prince, in

58. This sentence is omitted by *L*. Vitoria's argument, which here passes from the anthropomorphic image of the indefectible *corpus mysticum* of the Church to a specific legal corollary, namely its nature as a corporate body (*universitas*) to which may be applied the Roman legal principle that 'what is done publicly by a majority is held to be done by all' (*Digest De diversis regulis iuris antiqui*, 160 §1), was a characteristic manoeuvre of medieval theorists (Tierney 1955: 46, 132–41).

59. This sentence is omitted by *L*.

the beginning before the division [of races]; therefore, since this power was part of natural law, it must still exist.

From this conclusion we may infer a corollary: that even in free city-republics (*liberae ciuitates*) such as Venice and Florence the majority of citizens could if they wished elect a king, even if some voted against it. And this would clearly be true, not only at specific times when it would obviously benefit an aristocratic or timocratic constitution, but also on the general principle that it might at some unspecified time be of such benefit. Once the commonwealth assumes the right to administer itself, and once the principle of majority rule is established, it may adopt whatever constitution it prefers, even if this is not the best constitution; just as these cities at present each have an aristocratic constitution, which is not the best.⁶⁰

[Question 3: Laws and constitutions are binding in conscience]

- §15 MY THIRD MAIN PROPOSITION IS that *the laws and constitutions of rulers are such, that whoever transgresses them is guilty of a crime in the court of conscience*. The same holds true of the commands of parents to their children, and husbands to their wives. A number of fundamental and interesting precepts could be adduced in connexion with this proposition, but I shall be brief:

[Question 3, Article 1: The laws of secular rulers are binding in conscience]

IN THE FIRST PLACE, there are those who believe *that laws do not have force to make transgressors guilty in conscience*.⁶¹ The laws' force, they say, is purely penal; rulers and magistrates may exact just punishment from

60. *L* reads 'just as Rome once had an aristocratic constitution', probably because by the time *L* was published the Florentine republic, which had been briefly restored (1527) for the last time the year before Vitoria delivered his relection, was no longer a relevant example, having been crushed by the forces of the Medici pope Clement VII and Charles V in 1530. For Vitoria in 1528, on the contrary, any reference, however ironic, to the loss of Roman liberties in the immediate aftermath of the Sack of Rome by Charles V's troops (May 1527) would have been insensitive.

61. Compare *On Law* §124, in *ST* I-II. 96. 4. Vitoria's chief purpose in the remainder of this article is to refute the Lutheran heresy that the commands of an ungodly prince are not binding in conscience (see the Introduction, pp xvi–xvii).

those who break them, after which their subjects are held to be no further responsible in the sight of God. This is paralleled by what many religious orders say of their constitutions, that their rule 'obliges in respect of punishment (*ad poenam*), not in respect of guilt (*ad culpam*)'.⁶² Now these ravings are not devoid of reasoned proofs:

1. It would otherwise follow that secular power, if it had power over conscience (which of course is a spiritual matter), would be equivalent to spiritual power.

2. The aim of the commonwealth and of secular power is solely temporal, that is to say the peaceful common life of its members; this has nothing to do with conscience.

3. All secular power would be incomplete and imperfect if it had the power of obligation in respect of guilt, without the corresponding power of absolution.

4. Each sinner would be punished twice for the same sin, which is contrary to the prophet's statement that 'God does not judge the same thing twice'.⁶³ That is to say, in this world they would be punished by their rulers, and in the next by God.

5. The secular power cannot effect spiritual punishment, and so cannot pass judgment on spiritual guilt, having no greater competence in the latter than the former.

6. Either rulers are empowered to oblige in conscience through the laws, or they are not. If they are not, how do you explain that spiritual prelates have this power (as is clear in the decretal *Religionum*, *Sext* 3. 13. 1)? If they are, how can we know when they wish to assign guilt in respect of conscience, since they themselves do not expressly explain it?

ON THE OTHER HAND, despite all these arguments, there is no doubt that *civil laws do assign guilt in respect of conscience*. There is the clear testimony of Paul, who says on the present subject: 'Wherefore ye must needs be subject to the power not only for wrath, but also for conscience sake' (Rom. 13: 5). Likewise, Peter says in his canonical epistle: 'Submit yourselves to every ordinance of man for the Lord's sake' (1 Pet. 2: 13). These passages would be wholly meaningless if laws made us responsible only to the judicial courts (*in foro contentioso*), that is to say

62. The first and most famous of such religious rules was that of Vitoria's own order, the Dominicans: see the Glossary, *s.v.* obligation.

63. *L.* omits the relative clause, in which Vitoria cites the common canonist principle *Non iudicat Deus bis in id ipsum*, a quotation from Nahum 1: 12 according to the Septuagint's version (the Vulg. and AV read 'Though I have afflicted thee, I will afflict thee no more'). This in turn refers to God's covenant with Noah not to visit a second flood upon a sinful earth (Gen. 9: 11 - 17).

not in the court of conscience; though someone might object that 'to oblige in the court of conscience (*in foro conscientiae*)' is not the same thing as 'to oblige in respect of guilt (*ad culpam*)', especially since members of religious orders profess in their statutes to be bound 'in the court of conscience' even though these statutes do not assign guilt.

I REPLY that *both civil and ecclesiastical laws are binding both in respect of punishment and in respect of guilt*. This is clearly proved by the words of Paul, 'they that resist shall receive to themselves damnation' (Rom. 13: 2). Damnation is incurred only by guilt; therefore it follows that those who transgress the laws incur real guilt in the sight of God.

§16 In explanation and confirmation of this point, it is important to distinguish first the differences, and then the similarities, between divine and human law.

They differ in this: that divine law, since it comes from God alone, cannot be annulled or abrogated by any other agency, whereas human laws are established by men, and can be annulled or allowed to fall into disuse by men. A further difference is that, for divine law to be just and consequently binding, the will of the Lawgiver is sufficient, since His will is itself the reason for the law; but for human laws to be just and binding, the will of the legislator is not sufficient, since the law must also be moderate, and useful to the commonwealth. Together with these differences, divine law imposes a stricter and more intense responsibility than human law, since in many cases divine law imposes obligations which are not required by human law. I cannot myself see any other differences.

As for the similarity, it is as follows. Divine law has the power to determine that one thing is essentially and generically virtuous, while another is essentially vicious. In this sense, anything which divine law prescribes is good and dutiful (which it would not otherwise be), while anything which it prohibits is thereby held to be bad and evil (which it would not otherwise be). This can be clarified by examples: baptism, confession, and the other sacraments have no virtue in them other than the fact that they are established and enjoined upon us by God, just as the dietary prohibitions against certain meats and other points of conduct in the Old Testament implied no inherent vice in these things beyond the fact that they were prohibited by the Law. It is broadly clear, then, that nothing is vicious unless it is prohibited in law, nor virtuous unless it is praised and recommended in law. As the doctors of the Church stoutly prove, all goodness in the human will consists in obedience to the will and law of God, and all evil consists in disobedience to divine law, which is the yardstick of all human actions. In the same way, I say, human law has the power to decide that one thing is essentially

virtuous, while its contrary is essentially vicious. For example, just as divine law prohibits drunkenness as intemperance and praises fasting as a work of virtue, so human law defines the eating of meat during Lent as unlawful intemperance. So as not to cite examples only from ecclesiastical law, take the purchase of public offices for money: this is banned as bribery (*ambitio*) in human law, but would not be wrong if it were not prohibited. So too, if human laws set a limit to spending on weddings,⁶⁴ any expenditure on the feast beyond the limit set by the law, though temperate and magnificent enough before the imposition of the law, would become intemperance. To come to the point: there is no difference between human and divine law in this respect. Nor do they differ on the point that merit attaches to virtuous actions, guilt to vicious ones.

§17 Therefore, *just as divine law has the power to assign guilt, so too does human law.* If this seems a wilful conclusion, here are the proofs. First, human law comes from God; therefore it imposes responsibility just like divine law. The major premiss is proved as follows: a work of God is not only one which He performs Himself, but also one which He produces through intermediate second causes. Therefore divine laws mean not only those which God himself has instituted, but also those which men have carried by the authority of God. By the same token, papal canons mean not only those promulgated by the pope himself, but also those carried by men with the papal authority; thus we refer to the statutes of universities and colleges as 'papal constitutions', even though it is common knowledge that they were not drafted by the pope himself, but by others acting on his authority.

Second, for even clearer proof, we may argue like this: granted that the pope has the authority to make laws binding in conscience, if he authorizes a deputy to make laws for some community, instructing them to obey the orders of the prelate in question, will not the legate's orders have the same binding force in conscience? Well then: by the same token, when the Lord says 'by me kings reign, and princes decree justice' (Prov. 8: 15), why should their commands not be binding in conscience, since the decrees of the pope's legates are? Upon my honour, it seems quite absurd that a papal legate should be able to assign spiritual guilt, as all concede he may, on the grounds that the pope has decreed obedience to his rulings, but that Christ should decree obedience to rulers while denying that their laws concern spiritual guilt! In short, those who

64. L: 'The wearing of silk is considered luxury solely because it is prohibited, and' (there seems no explanation for this variant, unless there had been some change in sumptuary legislation after 1528; cf. the last paragraph of 3. 2 below). Laws against excessive spending on weddings were common throughout Europe in the Middle Ages, being attested in Castile from 1256.

concede that papal decrees are binding in conscience (and all authorities who are not heretics concede this)⁶⁵ cannot possibly deny that civil laws also have the same force. The Lord made the princes of this earth to govern the temporal commonwealth, as he made pontiffs to govern the spiritual commonwealth. The words 'He that despiseth you despiseth me' (Luke 10: 16) refer not only to ecclesiastical authorities, but also apply fully to civil magistrates. Scripture commends obedience to secular powers no less diligently than to ecclesiastical ones.

As far as guilt in conscience is concerned, therefore, it is absolutely irrelevant whether laws be human or divine. A sacrament would be no less valid for being founded by the apostles or by the Church, supposing they had the same authority, than if it were founded by Christ himself; nor are the commands of the Old Testament any less binding, because they were handed down by the angels and not directly by God himself, than the evangelical law given to us by Christ in person. That this is so must be taken for certain fact.

§18 [Question 3, Article 2: Human laws may be binding in respect of mortal guilt]

BUT IN THIS CONNEXION it may be asked *whether human laws are binding in respect of mortal or venial guilt?*

1. That they may sometimes oblige in respect of mortal guilt appears sufficiently clear from the words of Paul: 'Whosoever therefore resisteth the power shall receive to themselves damnation' (Rom. 13: 2).

2. Dathan and Abiram were swallowed up by the earth because they rebelled against Moses and Aaron (Num. 16); yet God does not punish venial faults with death.

ON THE OTHER HAND it seems that *they never oblige in respect of mortal guilt*, because if a precept of divine law whose transgression incurs only venial guilt clashes with some human law, we ought to obey the divine law and break the human one. Take lying, for instance, and a case where the commandment against telling lies clashes with some human law. Now if all human laws were binding in respect of mortal guilt, it would be better to obey the human law than a divine precept about a venial transgression, since a mortal crime is more serious than a venial one.

65. L omits the parenthesis.

I REPLY to this doubt, which though serious is easily answered, from what has been said a moment ago. I have shown that, as far as their obligations in respect of conscience are concerned, human and divine law have the same judicial force. In considering the manner and extent of the moral obligation imposed by human laws, therefore, we must consider them exactly as if they were divine laws. Hence a human law whose transgression would incur mortal guilt if it were divine, imposes a no less mortal responsibility, albeit human; and one whose transgression would incur venial guilt if it were divine, imposes a venial responsibility. I have shown that in this respect the two types of law do not differ, and human law incurs the same moral guilt as laws given by God, though not so powerfully. And so, just as some divine laws concern venial guilt and others mortal, so too some human laws concern mortal guilt, for instance those to do with adultery and murder, while others, such as those to do with lying and idle talk, concern venial guilt.

§19 But, it may be objected, *how are we to know when human laws involve mortal guilt, and when venial?* Civil law itself fails to define this point; or rather, the problem never even entered the legislator's head when he drafted the law.

I reply that a definitive answer on the question of mortal or venial guilt is often lacking even in divine law, and even more so in natural law. Furthermore, in the case of mortal guilt, no express definition of the relative gravity of one transgression compared to another is provided. We are told 'Thou shalt not kill', and in exactly the same way we are told 'Thou shalt not steal' (Exod. 20: 13, 15); so too 'Ye shall not lie one to another' (Lev. 19: 11), and 'Every idle word that men shall speak, they shall give account thereof in the day of judgment' (Matt. 12: 36). Therefore the problem of distinguishing the gravity of sins against human laws is exactly the same as it is for sins against divine laws, at least where the gravity of a particular sin is not expressly defined. The only answer is to think the whole problem through in terms of the case in question. Thus, for example, in natural and divine law mortal sins are considered to be those which offend against the honour due to God or the love due to our neighbour, such as blasphemy or murder, while venial sins are those which offend against reason or law but do not offend against the honour due to God or the love due to our neighbour, such as idle or ridiculous lies. And it will be the same with human laws: where an enactment vitally concerns the peace of the citizens, the increase of the common good, or public morals, any transgression against that statute will be a mortal crime; but where an enactment is something more trivial, useful but not necessary to the commonwealth, then the crime will be venial. Examples are not so readily to hand as for divine law, but we might take

as an instance the question of taxes. Taxation is wholly necessary for the defence of the commonwealth and other public provisions and works, and therefore tax-evasion is a mortal sin. If there were no divine laws, God would entrust the whole task of maintaining the law to men; there would be a civil law against murder, and another against lying, and the first would incur mortal guilt, the second venial guilt, just as they do now because these are divine laws. On the other hand, if someone now contravenes the civil laws against selling or wearing silk, this is clearly not a mortal crime. Other more apt examples could doubtless be found; but the fact remains that this point does not depend on the whim of the legislator, but on the nature and quality of the case in question.

From this it will be evident how mistaken are certain modern theologians who affirm that the gravity of sins is to be weighed and considered by the degree of obligation involved. We have seen that the exact opposite is true: the degree of obligation is to be weighed by the gravity of the sin. There is, indeed, no other way of deciding whether there is a greater obligation not to kill than not to steal, except by first considering the actual crimes; one cannot proceed in the reverse order.

Nor must we only consider, when deciding whether to allow or prohibit a thing by law, whether that thing would be good or bad for the commonwealth at that particular time or on one single occasion; we must instead consider what would happen if it were done commonly, by all or by many. For instance, if the export of money (*pecuniae*) outside the kingdom is prohibited, then anyone who smuggles out money commits a mortal crime, because although a single infringement is of little damage to the commonwealth, if it were to become general the kingdom would be wasted away; therefore the law obliges all on pain of death.⁶⁶ Similarly, one case of fornication does little harm, but general fornication would do great damage, and therefore this too is a mortal crime on every occasion.

But a vehement objection may be raised against the preceding conclusion: if the gravity of a sin against civil law is to be weighed by the quality of the crime, then it is not the law itself which determines the guilt of the action, because if the transgression is harmful to the commonwealth after the passing of the law, it must also have been harmful before. In

66. This example, and others adduced in the article (sumptuary laws, taxation), reflect the School of Salamanca's pioneer interest in questions of political economy, especially those posed by the influx of American bullion and the 'price revolution' (cf. *On Dietary Laws* 1. 5, p. 228). Vitoria uses the term 'money' in a metallist sense, anticipating a common mercantilist argument. His following reference to sumptuary laws emphasizes *conservatio status* or *buena policía*, the preservation of social hierarchy, rather than any medieval religious concern with curbing 'vanities'.

this case, the transgression was just as grave a sin before as it is after the passing of the law. The first reply to this is that the law does not only oblige by prohibition, but also by prescription. Thus something which before the passing of the law may have been desirable but not necessary for the good of the commonwealth, may be prescribed by the law; and then any transgression will become a sin, which it was not before. Secondly, as the examples cited above show, there may be things which are wrong if done by one person, but not if done by another; once the law is passed, however, the thing becomes wrong for all to do, given that there were sufficient grounds for the general prohibition, even though it may have been something unobjectionable in itself such as wearing silk or cloth of gold. These practices may previously have been wrong, say, for impoverished noblemen; after the passing of the law they become wrong for all, given that this fact in itself gave sufficient grounds for prohibiting the practice altogether, however innocent it may have been for an individual magnate to wear gold or silken clothes.

§20 [Question 3, Article 3: A prince may avoid imposing obligation in respect of guilt]

BUT IN THIS CONNEXION there remains a further doubt: *surely, should a king by any chance wish not to oblige in respect of guilt, he may avoid doing so?*

I REPLY that this is not in doubt.⁶⁷ An ecclesiastical legislator may on occasion make some statutes without any obligation, acting like the head of a religious order towards his brethren. It would be absurd to say that the constitutions of an ecclesiastical prelate do not always oblige in respect of guilt (*ad culpam*), but that secular laws always must. Sometimes a legislator, be he ecclesiastical or secular, does not wish to exact due obedience from his subjects, but simply states what should be done, informing and directing rather than commanding. There are numerous such directives to be found in enactments and pragmatics both civil and ecclesiastical. This is like a creditor who asks for his money; he need not always exact his demand as a peremptory obligation.

67. On the basis of this claim Suárez attributed to Vitoria a doctrine of purely penal law (*Tractatus de legibus et legislatore* Deo V. 4. 2, in Suárez 1856–78: V. 423). But Vitoria does not develop the point here, and in his commentary on ST II-II. 186. 9 (Vitoria 1932–52: VI. 378) seems to have abandoned the distinction on the grounds of the evident injustice of punishment without guilt.

§21 [Question 3, Article 4: Civil laws are binding on the legislator]

ANOTHER QUESTION is *whether civil laws are binding on the legislators, and especially on kings?*⁶⁸ Some authorities argue that they are not, since rulers are set over the commonwealth, and obligations can only be imposed by a superior.

ON THE OTHER HAND it is more probable that they are bound by laws.

I REPLY with the following proofs. First, the legislator commits an injustice against the commonwealth and its other members if, being a member of the commonwealth, he does not share in its burdens, at least according to his person, rank, and dignity. But this is an indirect proof. A different one is that laws passed by a king have the same force as if they were passed by the whole commonwealth, as explained above; but laws passed by the commonwealth bind everyone. Hence laws passed by a prince also bind the prince himself, even if he is the king. There is confirmation of this in the practice of aristocratic principates, where the decrees of the senate are binding on the senators who pass them, and in popular governments, where the decrees of the plebs are binding on the whole populace. Hence the laws of kings are also binding on the king. The king is free to make laws as he chooses, but cannot choose whether to be bound by the law or not. It is similar to a treaty: anyone may choose whether or not to sign the treaty, but once made he is not free to choose whether he will be bound by its terms. A king does not cease to be a member and part of the commonwealth just by becoming king.

From what has been said we may infer the following corollary: that the law of nations (*ius gentium*) does not have the force merely of pacts or agreements between men, but has the validity of a positive enactment (*lex*).⁶⁹ The whole world, which is in a sense a commonwealth, has the power to enact laws which are just and convenient to all men; and these make up the law of nations. From this it follows that those who break the law of nations, whether in peace or in war, are committing mortal crimes, at any rate in the case of the graver transgressions such as violating the immunity of ambassadors. No kingdom may choose to ignore this law of nations, because it has the sanction of the whole world.

68. See *On Law* §126, pp. 180–2. There too, Vitoria is chiefly interested in the third of the *obiecta* discussed by Aquinas, Ulpian's famous *Princeps legibus solutus*, which declares that the sovereign is not subject to the laws (*Digest* I. 3. 31).

69. Vitoria here distinguishes between *ius* and *lex* ('enactment'). For commentary on the passage see the Introduction, pp. xv–xvi; Skinner 1978: II. 152–4; Tuck 1979: 35.

§22 [Question 3, Article 5: Laws cease to be binding if the reason for them ceases universally]

ON THIS THIRD QUESTION there arises another doubt: *if the reason for a law ceases, does the obligation to obey cease also?* For example, the law decrees that no one may carry arms at night. The reason for this law is to prevent nocturnal ambushes. I know, however, that I am never going to lay a nocturnal ambush; am I then guilty if I carry arms?

I REPLY that the reason for a law may cease to be applicable in one of two ways. The first is that the reason for the passing of the law may cease universally.⁷⁰ Thus a law which prohibits running arms to France in time of war is not binding in time of peace, since both the obligation and the duration of a law are governed alike by the purpose for which it is framed. If the reason for passing the law ceases, so does the reason for obeying it. This is confirmed by the principle that the causes which bring things to birth may also be the causes of their decay: so that if a thing is no longer useful to the commonwealth, it is no longer law. But the second way in which the reason for a law may cease is with reference to a particular individual, not absolutely with reference to all or most individuals, as in the instance which I first mentioned; and in this case the law is utterly binding. Since disturbances often arise from carrying arms at night, reason demands that everyone be prohibited from doing so; otherwise the law would be ineffective.

Take, as another example, a law which prohibited anyone from taking a lighted candle to bed because of the danger of fire: even though a man were sure that he could have a candle without danger, it would be quite unlawful for him to do so. This is the clear conclusion in this case, and the same is true of the precepts of natural law. For example, fornication is prohibited, according to the lawyers, because of the undesirable consequences which it would bring in its wake; for example, many children would not be properly brought up for lack of known parents, and if promiscuous sexual intercourse were lawful few men would choose to wed their lawful wives and take care of their families. Since this reason is always valid, it follows that even if in a particular case these and other undesirable consequences could be avoided fornication would still be prohibited, since the reason for the prohibition remains valid for all absolutely. Similarly, in positive law, abstinence from eating meat on certain days is proscribed as a penalty for sins and to mortify

70. *S* quia in universali cessat : *omm. PL.*

the body 'and bring it into subjection' as Paul says (1 Cor. 9: 27); but what if a certain person, being without sin and under no special penance, was the sort who would suffer even greater mortification by abstaining from fish than from meat? Despite the fact that abstaining from fish is the greater abstinence in his case, it would still hold that, since the reason for passing the law remains all the while valid and binding, this person would commit a sin by eating a single ounce of meat on those days, whereas he could freely eat up three pounds of fish if he wished.⁷¹

§23 [Question 3, Article 6: The laws of tyrants are binding]

A FURTHER POSSIBLE DOUBT is *whether the laws of tyrants are binding*. It seems not, since tyrants have no legitimate power whatever.

ON THE OTHER HAND, when a commonwealth is under oppression by a tyrant and has no control of its own affairs, and can neither make new laws nor enforce those already passed, if it fails to obey the tyrant the whole commonwealth will be destroyed.

IT SEEMS CLEAR that laws which serve the commonwealth's purposes are binding, even when passed by a tyrant; not, to be sure, because they are passed by the tyrant, but because they have the commonwealth's consent, since utility and respect are better served by obedience to a tyrant's laws than by disobedience to all law. It would obviously be to the detriment of the commonwealth, were some prince with no just title to topple the government, that there should be no courts, no way to arraign criminals, no punishment for those who commit injustice. Yet this would be the inevitable result if the laws of a tyrant emperor were not binding. What would be the standing of the decrees and edicts of the officers of the law, or of the tyrant's own court of justice, if even they were not legitimate judges?⁷²

71. This paragraph is replaced in *L* with: 'since everyone would take it that the law applied to others, not to himself; and so with other precepts it is the universal argument, not the individual, which must be considered'.

72. The last two sentences are omitted in *L*. On the question of resistance, the argument that even 'tyrannical' laws should not be disobeyed if to do so means flouting the principle of civil authority and promoting anarchy comes from Aquinas, *ST* I-II. 92. 2, and is based on Aristotle's definition of a good citizen as one who acts 'as the city requires' (*Politics* 1260³⁰). Aquinas argues that law makes us good, if not *simpliciter*, at least *secundum quid* 'insofar as we are obedient to it'.

§24 [Question 3, Article 7: The commands of parents and husbands are binding in the same manner as civil laws]

THE LAST ARTICLE UNDER THIS QUESTION IS *that the commands of parents to their children, and of husbands to their wives, are binding in the same manner as civil laws.*

The proof as far as children are concerned is as follows: just as Paul teaches us to obey the powers that be (Rom. 13: 1), so he also recommends obedience to our parents: 'Children, obey your parents' (Eph. 6: 1; Col. 3: 20). But if disobedience to those in authority obliges a man in respect of guilt (*ad culpam*), so too does disobedience to one's parents; so that amongst the many sins into which Paul says God allowed the gentiles to fall is numbered 'disobedience to parents' (Rom. 1: 30). The laws also teach obedience to parents; so that if laws are binding in respect of guilt (*ad culpam*), disobedience to parents is a matter of guilt. Certainly this is indicated by the commandment to honour thy father and thy mother (Exod. 20: 12). And since, as I have said above, laws sometimes oblige in respect of mortal guilt and sometimes in respect of venial, the same may be said of the commands of parents; so that if a father commands something which is of great importance for the government of the family, it will be a mortal sin to transgress it; indeed, the same is true of commands which concern the well-being of the child itself. But, as I have shown, not every law obliges in respect of guilt (*ad culpam*); some are merely the sovereign's prescriptions rather than his directives. And this is much more true of the commands of parents, who do not always intend to exact the dues of obedience, but merely say things to indicate what they want. It should also be noted that, since the family is part of the commonwealth, the law can determine where the obedience of children to their parents should be required and where it should not, as it does for example in determining the age of majority; and therefore in matters not covered by the law it may be assumed that disobedience will not incur guilt. It is also the business of the law to determine the punishments which a father may inflict or threaten to inflict on a disobedient child, and this limit may not be exceeded by the father.

As for the commands of husbands, this is easy to prove, since the family could not exist without a single head whom all the others are bound to obey. So this must be the man of the house, 'for the husband is the head of the wife' (Eph. 5: 23); and it says in the same passage, 'wives, submit yourselves unto your own husbands, as unto the Lord' (Eph. 5: 22). And lower down: 'and the wife see that she reverence her husband' (Eph. 5: 33). The laws also order the same thing. Therefore

wives are bound by their husbands' command; and these same laws decide how and to what extent the wife is required to obey her husband, and whether he may punish her by beating, just as we have shown above in the case of children.

Praise be to God Almighty, world without end. Amen.

I ON THE POWER OF THE CHURCH

(*De potestate ecclesiae Prior*)

*This first of the two relections on the power of the Church was delivered early in 1532, and was followed a year later by the second.*¹

The text of this relection in P omits some quotations and words in Greek at the start and various references to authorities, as well as introducing a number of minor corruptions, chiefly by careless copying; these corrupt passages in P have been mended from L (the variants are duly indicated in the footnotes). P's invaluable division of the text has also on this occasion been partly preserved in the printed editions, which retain the headings of the six questions, though not the separate articles. We have taken advantage of this fact to correct P's scribal error in the numbering of Questions 4, 5, and 6 (see footnotes 40, 46, and 68).

1. Both dates are given in the titles of the respective relections in *P* (fols. 1r and 18r). The first relection probably belonged officially to the university session of 1530-1 (the opening words of the second in *L* read 'In my relection for the year 1531 I spoke about ecclesiastical power'), but was doubtless delivered, as the relections seem regularly to have been, some months late, in the New Year following the end of the corresponding academic session.

RELECTION I ON THE POWER OF THE CHURCH
BY THE CELEBRATED REVEREND FATHER
FR. FRANCISCO DE VITORIA, MASTER OF THEOLOGY,
DELIVERED IN SALAMANCA, A.D. 1532²

[Introduction: Definition of the term church]

§1 My intention today is to talk about the power of the Church. I must therefore start with a few remarks about the term 'church' (*ecclesia*),³ so as to make clear what it is we are talking about.

The original Greek term *ekklesia* is a noun meaning 'council, meeting,'⁴ 'assembly', and also 'the place where such a meeting takes place'. So it is understood by Lucian in his *Dialogue of Mercury and Maia*; and from it are derived *ekklesiazo*,⁵ 'to convene or address an assembly', and *ekklesiastes*, 'one who addresses an assembly, preacher'.

Now this Greek term, like many others, did not enter the Latin language until after the Salvation (that is, the Christian era); it was never used before that time, as far as I know, by any Roman author. But *ecclesia* is very frequently used in the works of the Fathers and first founders of Christian literature and thought. We find it, for example, in Tertullian, Cyprian, Lactantius, and Jerome, as well as many other famous writers. Wherever the Greek Scriptures say *ekklesia*, most translators put the Latin transliteration *ecclesia*.⁶

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2. *LS* read: 'First Relection of the Reverend Father Francisco de Vitoria, O.P., late Prime Professor of Theology in the University of Salamanca, On the power of the Church, on the passage *And I will give unto thee the keys of the kingdom of heaven* (Matt. 16: 19).'
 3. Vitoria's discussion centres on the etymology of Latin *ecclesia* (hence *iglesia*, *église*); the corresponding term in Germanic languages (*church*, *Kirche*) derives from an unrelated root, *kyrios* 'Lord'.
 4. *LS* concio: *communicatio P.*
 5. *om. P.* The Palentine MS also omits all the subsequent Greek words.
 6. *L* adds: 'A few, however, put *congregatio* or *contio* "assembly"; where our translations read "accordingly to all that thou desiredst of the Lord thy God in Horeb in the day of the assembly (*quando contio congregata est*)" (Deut. 18: 15-16), the Septuagint reads "in the day of the *ekklesia*" '.

§2 This term *ecclesia* is, therefore, almost equivalent to *synagoga*, which also means ‘assembly, congregation’ in Greek. Thus in Genesis 1, where the Septuagint talks of ‘the gathering together of the waters’ using the word *synagogas*, the Vulgate translates using the word ‘congregations’ (*congregationes aquarum*, Gen. 1: 9–10). Nevertheless, there is a slight difference between the two words. Bede comments on the verse in Proverbs, ‘I was almost in all evil in the midst of the congregation (*ecclesia*) and assembly (*synagoga*)’ (Prov. 5: 14):

ecclesia and *synagoga* are Greek nouns meaning the same thing, *conuentus* in Latin, or ‘coming together’ of many people face to face; but if we want to be more accurate, *ecclesia* means ‘calling together’ whereas *synagoga* means ‘herding together’.

§3 That is to say, the Greek verb *synago*, from *syn* and *ago* ‘lead, carry’, means ‘herd together’, not ‘call together’. Augustine comments on Psalm 81: 1 (‘God standeth in the congregation of the mighty’): ‘that is, among the people of Israel’.

§4 A similar argument may be found in Isidore, *Etymologiae* VIII. 1. 7–8, who alludes to the irrationality of the Jews:

The Jewish congregation is properly called ‘synagogue’, although it is also called ‘church’. But the apostles never called our Church ‘synagogue’. They always use the word *ecclesia*, either to distinguish it from that of the Jews, or because there is some difference between *synagogue* ‘congregation’ and *ecclesia*, ‘convocation’: namely, that congregation (from the Latin word *greges* meaning ‘herds’) suggests herding cattle, while convocation or ‘calling together’ is more appropriate to rational beings and men.

§5 According to this etymological explanation, then, *ecclesia* might refer to any sort of assembly of men. However, so far as I know you will not find the word used in the Scriptures, either in the Old or in the New Testament, except in the special sense of *an assembly or congregation of the believers of some single creed*, whether they be good or evil – for it is quite clear, from the contexts where the word is used, that there were indeed other churches than those of the faithful. For example, we find phrases such as ‘the congregation, or assembly of Saints’ (Ps. 89: 5–7, 149: 1), ‘the congregation, or church of the Lord, or of God’ (Num. 16: 3; Acts 20: 28; 1 Cor. 1: 2), ‘the congregation of Israel’ (Num. 16: 9; 2 Chr. 5: 6), and ‘I have hated the congregation of evil doers’ (Ps. 26: 5).

§6 But if we define ‘church’ in this way, it may be asked *whether heretics are members of the Church?* On the one hand it seems that they are:

1. The Church passes judgment upon them, for instance when it excommunicates them or brings them to trial. But the Church has no

concern whatever with those who are not its members, 'for what have I to do to judge them also that are without?' (1 Cor. 5: 12).

2. Heretics are bound to obey the precepts of the Church, *ergo*.

3. Baptism is a sacrament of the Church, and heretics are duly baptized.

4. And again, as will be argued later, a heretic may be a priest or even a pope, that is to say the head of the Church, and consequently a member of it.

§7 BUT ON THE OTHER HAND these are quibbles about words, not arguments of substance. It will be seen that in the Scriptures and in the earlier Fathers the word *ecclesia* is only used to mean 'congregation of the faithful' (*congregatio fidelium*), which clearly excludes heretics from being counted among the members of the Church.⁷ According to Isidore the word *heresy* means 'choice, sect, division' (*Etym.* VIII. 3. 1-2); heretics are so called because they have been 'divided and cut out' of the Church.⁸ So Peter was told: 'but if he neglect to hear the church, let him be unto thee as an heathen man and a publican' (Matt. 18: 17); the implication is that heretics are no more to be counted in the Church than pagans and publicans. The Apostle says: 'One Lord, one faith, one baptism' (Eph. 4: 5), so it appears that these three are the conditions of unity in the Church. Likewise, in St Peter's summary, the Catholic faith is one faithful universal Church, outside which no man may be saved (1 Pet. 1: 2-24).⁹ Unbelievers cannot belong to this. Cyprian writes in his letter to Rogatianus (*Ep.* 2. 9): 'The beginning of heresy, the first faltering step towards schism, is when a man leaves the Church and sets up his profane altar outside.' Augustine comments on John (*Tract.* 110) that 'we are all united in the community of faith', according to the words 'for ye are all one in Christ Jesus' (Gal. 3: 28), on which the *Glossa* adds: 'that is, in the faith of Jesus Christ'.

IN CONCLUSION, the word 'church' seems to mean nothing other than *the Christian commonwealth and religion*. It is of little importance, then, what theoretical rights or reasons are adduced to show that heretics are

7. For this definition, see the Glossary, *s.v.* *congregatio fidelium*. Vitoria's careful initial definition of the congregation of the faithful as excluding heretics is aimed at the Lutherans.

8. There is an untranslatable play on words between *secta* 'sect, path' and *secti* 'cut off' (cf. *section*).

9. *L.*: 'in the *Summa* [leg. *Symbolum*] on the Trinity and the Catholic faith there is one faithful church, etc.'. The somewhat vague reference to the Petrine epistle has apparently been substituted by an equally vague allusion to the Apostles' Creed.

members of the Church, since their actions are in practice incompatible with membership of the Church. Deserters cannot be part of the army from which they have deserted.

In this relection, therefore, I use the term 'church' to mean only *the community or commonwealth of the faithful*.

Question 1: Whether the Church has any dignity or ecclesiastical authority besides the civil power

§1 Before proceeding further we must define what we mean by the noun *power*, just as we did for *church*.

There is a distinction to be made between our use of the word *power* to mean 'authority', which is called *potestas* in Latin, and our use of the word to mean 'strength, capability', which is called *potentia* in Latin. Thus we talk of 'the *powers* of the senses, of the intellect, of the will, or of matter', meaning their capabilities, but we cannot in this case substitute the word *authorities*.

§2 Conversely, we speak of the *powers* of magistrates, priests, empires. But here we are referring to their authorities or jurisdiction, for which we could not substitute the word *strength*. The distinction in Latin is unambiguous: when Paul says 'Let every soul be subject unto the higher powers' (Rom. 13: 1) the word used in the Vulgate is *potestates*, 'political authorities'. Hence St Thomas comments that *potestas*, in addition to potential capability to act, seems to mean 'ascendency and authority' of some kind (*In Sententias* IV. 24 §1. 2 ad 3). Therefore to ask whether the Church has some 'spiritual power' is equivalent to asking, first, *whether the Church has some force or authority in the spiritual domain*, and then, *whether that force or authority is distinct from civil power*.

§3 **Question 1, Article 1: [Spiritual power is distinct from civil power]**

ON THE QUESTION at the end of the preceding paragraph there are many profound matters which I might dispute, but I shall answer briefly with a single proposition: that *there must exist in the Church a spiritual power of some kind, distinct from civil and lay power*. This is proved by the following propositions:

1. The Church has various different spheres of action, which do not all concern the same type of power. Some are to do with civil power, but others concern a different power, which must be spiritual. So the Psalm says of the Church, 'upon the right hand of God did stand the queen in

gold of Ophir' (Ps. 45: 9). Powers in the sense of 'authorities' (*potestates*) are defined by their purpose, just as powers in the sense of 'capabilities, strength' (*potentiae*) are defined by their object; hence, besides civil power we must also posit some spiritual power.

§4 2. Durandus of St-Pourçain in his treatise *De origine iurisdictionis* shows that power is set up in the commonwealth so that men may be drawn to do good and deterred from doing evil, according to the verse in Peter's first epistle which states that power was sent 'for the punishment of evildoers, and for the praise of them that do well' (1 Pet. 3: 14), and the words in Romans: 'Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same' (Rom. 13: 3). Now if the good things to which men were to be drawn and the bad things from which they were to be deterred concerned only this present civil life, then a purely secular and lay power would be sufficient; but in fact the life of the faithful is not only directed towards a civil purpose and life, but rather, and much more importantly, towards happiness in the eternal life, according to the Lord's teaching, 'But seek ye first the kingdom of God' (Matt. 6: 33) and that happiness which 'eye hath not seen, nor ear heard' (1 Cor. 2: 9). Man should not fear the ills and punishments of this life, but those of the life to come, 'and fear not them which kill the body, but are not able to kill the soul; but rather fear him which is able to destroy both soul and body in hell' (Matt. 10: 28; Luke 12: 4). And so, in order that men should be directed and carried towards this supernatural end and called back to the true way if by chance they have strayed from it, either by encouragement or reward or fear or punishment, some power besides the civil must be necessary.

§5 This argument is neatly summed up by Hugh of St Victor, *De sacramentis Christianae fidei* II. 2. 4, who says:

there are two lives, one earthly the other heavenly [. . .]. In order that justice can be served in both lives and prosperity flourish, men were first distributed on each side, to acquire the goods of each life by zeal and labour according to reason and necessity. Then there were others to dispense equity by the power of their office, so that no one should tread down his brother, but justice should be kept inviolate.¹⁰

If human society cannot exist without both these lives, then there must be two powers for the preservation of justice, one which presides over earthly matters and orders earthly life, and another which presides over spiritual matters and shapes the spiritual life.

10. The quotation is somewhat abbreviated in the text; I have supplied a fuller version from the translation of the passage in Tierney 1988: 94–5.

- §6 3. We have the words of Matthew to the effect that the 'keys of the kingdom' of heaven belong to the Church (Matt. 16: 19, 18: 18). This power is therefore different from civil power, since the civil power certainly does not hold the keys of the kingdom of heaven. In confirmation of this, the Church has the power of the remission of sins (John 20: 23), which does not belong to any king or civil magistrate; so too it has the power of excommunication (Matt. 18: 17–18; 1 Cor. 5: 7–13), and of consecrating the body of Christ (Luke 22: 13–20; 1 Cor. 11: 23–6).
- §7 4. Fourth and principally, the apostles of the Lord had power and authority in the Church, as we see from the passages already cited and from many others. But this power was not civil, since their power and kingdom was not of this world (John 15: 19, 18: 36). *Ergo*, etc.
- §8 5. Temporal and civil power is not lessened by being exercised by pagans, as I have shown elsewhere (*On Civil Power* 1. 6); and Paul clearly implies that Christians must be subject to this civil power, even when it is wielded by pagans (Rom. 13: 1–7). But pagans cannot wield the power of the Church; therefore the Church's power must be distinct from theirs. Even the pagans had high priests and priests whose duty it was to look after the sacred things, a task not entrusted to the consuls or other civil magistrates.¹¹
- §9 6. Finally, the exercise of power in government requires knowledge, according to Gregory the Great, who called the care of souls 'the art of arts' (*Regula pastoralis*, Intro.) But temporal rulers have no expertise in divine law, which ought to be the guideline of ecclesiastical power. Therefore the supreme heads of the Church ought to be different people from the secular lords. This is confirmed by the fact that no single man would ever be capable of fulfilling all the administrative duties of both the ecclesiastical and civil commonwealths, or of learning the separate disciplines involved in each; nor, however clever he might be at each, could he have the time to attend properly to both.
- §10 This is clearly confirmed by the following: royal power comprises all civil power, since to be king means to reign supreme over all things in the commonwealth; yet the king has no authority over liturgy and spiritual actions; therefore spiritual power is different from civil power. The second term of the syllogism is demonstrated by the Lord's mandate when Saul was created king: when 'Samuel told the people the manner of the kingdom, and wrote it in a book, and laid it up before the Lord' (1 Sam. 10: 25), the priestly power was not given to Saul. Indeed, when Saul made a burnt offering at Gilgal because Samuel was absent, his

11. LS transpose this sentence to a position a few lines below (see following footnote).

presumption was severely chastised by Samuel, who said to him 'thou hast done foolishly: thou hast not kept the commandment of the Lord thy God, which he commanded thee: for now would the Lord have established thy kingdom upon Israel for ever, but now thy kingdom shall not continue' (1 Sam. 13: 8–14).

Speaking of the two powers, Pope Gelasius said to the Roman emperor: 'There are two things by which the world is principally governed, the holy authority (*auctoritas*) of the pope and the power (*potestas*) of the king' (the canon *Duo sunt*, *Decretum* D. 96. 10).¹² And in the next canon of the same distinction of Gratian's work: 'If the emperor is catholic, he is a son of the church, not its head; as far as religion is concerned, it is his duty to learn, not to teach; he has the privileges of his power, which he has been given by God for the administering of civil laws' (*Si imperator*, *Decretum* D. 96. 11).

§11 Also in the decretal *Solita* (X. 1. 33. 6): 'God made the two great luminaries in the firmament of heaven; that is, he instituted two separate dignities in the universal Church.'¹³

Of these two distinct powers we have clear examples in the Old Testament. Of the secular power, for instance, we read in Exodus that Moses 'chose able men out of all Israel, and made them heads over the people, rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens, And they judged the people at all seasons' (Exod. 18: 25–6). Of the sacerdotal hierarchy of the high priest Aaron with his lesser ministers, on the other hand, we read in Numbers 3 that 'Eleazar and Ithamar ministered in the priest's office in the sight of Aaron their father', and later 'Thou shalt give the Levites unto Aaron and to his sons: they are wholly given unto him out of the children of Israel' (Num. 3: 4–10).

In the New Testament the same point is made. In Rom. 12–13, when he says 'let every soul be subject unto the higher powers' (Rom. 13: 1), Paul clearly shows that he is referring to the secular power. And so too Peter says in his first epistle, 'Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king, as supreme; Or unto governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well' (1 Pet. 2: 13–14) – though Nicholas of Lyre thinks that this passage can be interpreted as referring to both powers, secular and spiritual.

12. LS here insert the sentence from the end of §8 (see preceding footnote); P incorrectly reads 'Pelagius' for 'Gelasius'. On Gelasius' celebrated attempt to define the relationship of *regnum* to *sacerdotium*, see the Glossary, s.v. *Duo sunt*.

13. For the importance of Innocent III's decretal *Solita* in the *sacerdotium*–*regnum* debate, see the Glossary, s.v.

§12 About the spiritual power the New Testament offers so many testimonies that it is neither possible nor necessary to adduce them all here; for example, the passages on ‘feeding my sheep’ (John 21: 15–17), on the remission of sins (John 20: 23), on the keys of the kingdom of heaven, and the words ‘Whatsoever ye shall loose on earth shall be loosed in heaven’ (Matt. 16: 19, 18: 18). On the power of the elders [to consecrate the sacraments], we have the passage in Luke saying ‘Do this in remembrance of me’, etc. (Luke 22: 19); and on the ordination of bishops, priests, and deacons, the passages in 1 Timothy 3, Titus 1, and Acts 14: 23, 20.

[Question 1, Article 2: Further proofs of the existence of the spiritual power]

BUT FOR THE BETTER ELUCIDATION OF THIS CONCLUSION, I continue the discussion with a few contrary arguments:

1. Aristotle declares that ‘a multiplicity of rulers is a bad thing’ (*Metaphysics* 1076^a3, and *Politics* 1292^a14),¹⁴ and therefore it is not expedient for the Church to have various different powers, especially since the Church is not merely one commonwealth, but one body; as it is written in Romans, ‘we, being many, are one body in Christ’ (Rom. 12: 4–5; 1 Cor. 12: 12–27). And so, for the Church to have several rulers or prelates would be as monstrous and deformed as a body having several heads. Therefore it is better if one man alone administers both secular and ecclesiastical matters.

2. Aristotle shows that the purpose of civil power is to make and keep men good and studious of the truth; that is, endowed with the virtues (*Nicomachean Ethics* 1103^b3–4).¹⁵ But this aim, if fulfilled, would suffice to win not just human and temporal happiness, but also immortal and supernatural felicity. Therefore it is idle to contrive some power other than the civil.

14. Aristotle’s dictum is in fact a quotation from Homer, *Iliad* II. 204: ‘The rule of many is not good; let there be one ruler’; for the *Politics* passage, compare *On Civil Power* 2. 1, footnote 57.

15. *P* et vere [*sic, pro veri*] studiosos id est uirtutibus preditos : et edere studiosos *L* et efficere studiosos *S*. Aristotle states that ‘legislators make the citizens good by forming habits in them’, that is by habituating them (*ethismos*) through the discipline of law and education to right conduct (Pagden 1986: 72). For the expression *ueri studiosos*, cf. *On Law* §122 *bis*, at footnote 11; it was picked up by Soto, who stated that ‘the effect of law is to make men studious and virtuous (*studiosos et probos*)’ (1568: fols. 5^v–6).

3. The Lord said 'Then are the children free' (Matt. 17: 26); the *Glossa* declares on this that 'in any kingdom the children of the king are free'. Christians are the children of God, for 'to them gave he power to become the sons of God, even to them that believe on his name' (John 1: 12). Therefore they are free. And it is written, 'If the Son therefore shall make you free, ye shall be free indeed' (John 8: 36); 'ye are bought with a price; be not ye the servants of men' (1 Cor. 7: 23). These passages seem to show that Christians are exempt and free of all power and subjection, and that all ought to be equal; that there should be no masters, and no servants, no authority or power, at least of jurisdiction over others.

4. In the state of innocence there was no power; therefore there should be no power now, since 'Christ has redeemed us from the curse', etc. (Gal. 3: 13).

BUT ON THE OTHER HAND these are the arguments which heretics and schismatics use to dissuade or inveigle away the hearts of simple men from due obedience to their princes and their priests. In doing so they 'resist the ordinance of God, to their own damnation' and perdition, as Paul said (Rom. 13: 2). There is no need of any further answer, when the testimony of the Scriptures so clearly refutes their madness.

I REPLY to the assertions of these fellows, nevertheless (since we may sometimes be as much indebted to fools as to wise men for enlightenment), that for the solution of these objections we must attend to the fact that Wisdom 'reacheth from one end of the world to the other with full strength, and ordereth all things graciously' (Wisd. 8:1). This, then, is the mark of wisdom, as Aristotle puts it, 'to dispose all things in due order' (*Metaphysics* 982^a18–19). So God, who as He is supremely wise is also supremely powerful, could if He wished dispense altogether with the hierarchy of rulers and subjects, prelates and inferiors, to govern and administer all things, without any detriment to His creatures. But in fact that would not have suited His wisdom and infinite providence; rather, it suited Him to arrange that the earth should not present the ugly spectacle of a heap of things lying about by chance, but instead should be structured like a unified body or building, with its interconnected limbs or parts giving the whole a beauty worthy of its creator.

§13 And this same Wisdom, which decreed that in the natural world things in the lower spheres should be governed by things in the higher, as Aristotle explains in his *Metaphysics* (1074^a18–30); or, as Dionysius the Pseudo-Areopagite says in his *On the Divine Names*, speaking specifically of the sun, this same Wisdom which decided that in the celestial

world the lower angels should be governed by the higher;¹⁶ this same Wisdom, I say, provided that His Church be governed by a hierarchy in which the various offices are distributed in order, so that some are the eyes, some the hands, others the feet, and others again the remaining limbs, in due proportion. The Apostle elegantly expressed this in an aphorism: 'For as the body is one, and hath many members, and all the members of that one body, being many, are one body' (1 Cor. 12: 4–28). And Aristotle gives the reason for power in his *Politics* as the need in any well-organized assembly of men to have a leader whom the rest may obey (*Politics* 1254^a22–1255^b15).¹⁷

TO THE FIRST ONE MAY THEREFORE SAY that it would only be inexpedient to have several rulers or magistrates if all were equally concerned with the same purposes; but that is not suggested by the proposition. Civil power and ecclesiastical power are not concerned with the same end, as I have explained at sufficient length above. Further, they do not have equal powers, but in some sense complementary ones, as I shall show below.

TO THE SECOND the answer is clear from what has already been said. The whole civil administration is not sufficient to ensure man's eternal salvation; nor does civil or moral virtue and goodness alone suffice to gain life eternal, since for this it is also necessary to have, to mention only the most important things, faith, for 'he that believeth not shall be damned' (Luke 16: 16), and the sacraments, for 'except a man be born again of water and of the Spirit, he cannot enter into the kingdom of God' (John 3: 3–5), and 'except ye eat the flesh of the Son of man, and drink his blood, ye have no life in you' (John 6: 53). But the ministry of the sacraments belongs not to the civil power, but to the spiritual and ecclesiastical power. Therefore, just as our righteousness should 'exceed the righteousness of the scribes and Pharisees' (Matt. 5: 20), so too it should exceed the righteousness not only of pagans and heretics, but also that of the best philosophers; and so we should have some acts which are ordained for supernatural ends.

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16. This passage of Dionysius (correctly speaking, from his *On the Celestial Hierarchy* 4, 3) was regularly quoted in treatises on the subjection of the temporal to the spiritual power (see Boniface VIII's *Unam sanctam*, Tierney 1988: 189; Giles of Rome's *De ecclesiastica potestate*, *ibid.*: 198), and on the ecclesiastical hierarchy (see *ST Suppl.* 34, 1).
 17. This and the preceding paragraph combine the argument from design and the metaphor of the mystical body, which Vitoria had already used in *On Civil Power* 1, 1–2 and 2, 1, to make one of Vitoria's central ecclesiological concepts, that of the 'visible body politic' of the Church, which he later uses to combat the Lutheran idea of the priesthood of all believers (see *II On the Power of the Church* 2, 1).

TO THE THIRD I shall reply more fully later when I come to discuss the question of ecclesiastical liberties (6. 1-9 below). For the present, I reply with Aquinas and St Bonaventure that in this passage Christ was speaking of himself and his disciples, who were completely free; either because of their office, which they obviously exercised by the authority of spiritual power, for which reason their stipend was owed them, according to the passage in 1 Corinthians which says: 'If we have sown unto you spiritual things, is it a great thing if we shall reap your carnal things?' (1 Cor. 9: 11); or because, having no possessions of their own, they were for this reason exempt from all taxations, since tribute is owed not in proportion to one's person, but to one's wealth. Nor is any of this liberty lost by subjection to the spiritual power, since the latter is wholly for the utility of its subjects, not for that of the authorities or the ruler.

TO THE FOURTH I REPLY by denying the premiss. Even if there were then no magistrates or rulers to coerce men with fearful penalties, there was a directive and governing power, a father's power if you like, which His children were bound to obey. When the human race began to multiply, it became more and more likely that there would be some to oversee sacred ritual; and this would provide the reason for spiritual power. Of this I shall speak at greater length in a moment; and see St Thomas Aquinas, *ST* I. 96. 4.¹⁸

FROM ALL THE PRECEDING we are left with the certain conclusion that *there is in the Church some spiritual or ecclesiastical power, distinct by divine and natural law from civil and temporal power*. And if anyone wants a definition of this ecclesiastical power, it is this: the authority to rule the faithful in matters which concern religion, and to direct them towards the life eternal. Or, if anyone demands an even stricter and more accurate definition of ecclesiastical power as it exists in the Christian Church, it is, as Peter Lombard says (*Sentences* IV. 18 §*Claves*), the potential power to bind and loose, at the moment when the righteous are accepted into the kingdom and the unworthy excluded.¹⁹

18. Although Aquinas' article 'Whether men had dominion over one another in the state of innocence' provided Vitoria with a fundamental idea ('man is naturally a social animal . . . But there can be no social life among many unless one man presides over the rest in charge of the common good, for the many *per se* have differing intentions, while one man has a single intention'; cf. *On Civil Power* 1. 2, 1. 5), it contains nothing which is relevant to the present question of a *separate* spiritual hierarchy.

19. This paragraph is omitted in *L.S.*

Question 2: Whether any effect of the Church's power is truly and properly spiritual

Now that we have distinguished ecclesiastical power from civil power in terms of purpose, the one being ordered to a temporal and the other to a spiritual end, a second question follows: *whether any effect of the Church's power is purely and simply spiritual?*

[Question 2, Article 1: Ecclesiastical power is the cause of some spiritual effect]

TO THIS QUESTION I REPLY, first, that even if the power of the Church had no spiritual effect of this kind, it would still be different from civil power, and still called spiritual power. This has already been proved and demonstrated; it would still have a different purpose from that of secular power, namely supernatural happiness, divine ritual, and the well-being of the spirit, that is of the soul. None of these things concern the civil power; they are the province of ecclesiastical power, and are counted among the spiritual things.

§1 Therefore I propose the proposition that ecclesiastical power *is truly and simply the cause of some spiritual effect*. For the resolution of this proposition, we must call to mind the distinction which theologians make between two kinds of power, namely sacramental (*potestas ordinis*) and jurisdictional (*potestas jurisdictionis*):

§2 Church power, then, is of these two kinds, sacramental power and jurisdictional. Sacramental power concerns the true body of Christ, that is the eucharist; jurisdictional power concerns the mystical body of Christ, that is the government of Christian people as concerns their supernatural happiness. But by 'sacramental power' is to be understood not merely the power to consecrate the eucharist, but also that of preparing and rendering men fit to receive communion, and generally of doing everything in any way connected with the eucharist, such as consecrating priests and conferring other orders, and administering all the sacraments, remitting sins, and, in sum, doing anything which is relevant to any individual for the purpose of any sort of consecration. Sacramental power is therefore often called 'power of consecration'. As for jurisdictional power, its concern is the government of the Christian people, excluding the consecration or administration of the sacraments: that is, the promulgation and repeal of laws, excommunication, delivering judgment other than in the court of penance, and all other matters of this kind.

[Question 2, Article 2: Church power is the cause of some true spiritual effect in the remission of sins]

These are my premisses. But I must warn you that some heretics deprive each of the two keys of all their purely spiritual effects:²⁰

1. They deny the real presence of the body of Christ in the eucharist, and hence deny that anything spiritual is effected by the priest who consecrates the eucharist. In their view the eucharist neither is nor contains anything spiritual, but is merely a symbol or token, either of Christ's body or of grace.

2. They also deny that a priest [according to] the Gospel can truly forgive sins and confer grace.

3. They also deprive jurisdictional power of any spiritual effect whatever, denying that excommunication takes anything spiritual away from the excommunicated, affirming that it removes only his external communication with the faithful, which is not a spiritual matter.

PASSING OVER the heretics' first piece of madness concerning the eucharist (on which I have decided to say nothing for the present), let me say something about the forgiveness of sins and the effect of excommunication – though briefly, since I have discussed this topic in somewhat greater detail in the course of my ordinary lectures.²¹ On these matters there are some authors, even among Catholics, who do not attribute the forgiveness of sins, conferment of grace, or indeed any truly spiritual effect simply to sacramental power; just as there are others who do not concede that anything spiritual is taken away by excommunication.

§3 Therefore I repeat the initial proposition, that *both powers, sacramental and jurisdictional, have a true spiritual effect*; and to this end I submit that the keys of the Church, that is ecclesiastical power, are the proper cause of the forgiveness of sins and of grace. This is therefore the same disputation as whether first grace is ever conferred by the sacrament of penance.

ON THIS QUESTION the profounder ancient authorities seem not to have been in any doubt; they took it as settled that sins were often forgiven by virtue of the keys where forgiveness was impossible without them.

20. On the interpretation of the 'Two keys' of Matt. 16: 18–19, see the Glossary, *s.v. claves ecclesiae*.

21. The remainder of the article is, in fact, exclusively concerned with the issue of sacramental power (see the Glossary, *s.v. potestas ordinis*); Vitoria briefly disposes of the question of jurisdictional power (i.e. excommunication) in the last paragraph of 2. 4 with a passing reference to his lectures on Lombard's *Sentences*.

But more recent writers have long been locked in bitter and contentious combat on the subject. Some of the cleverer and more ingenious among them say that it could be reasonably argued in theological philosophy that mortal sins can never be forgiven except by an act of repentance, and that if this is so sins are never forgiven and first grace never conferred, by virtue of the keys – never forgiven in the court of God, I mean, and in such a way as to give forgiveness in the true sense of the word, that is by the remission of sin. I have wrestled with these views with greater attention and effort elsewhere; here I shall merely skim over the surface of the matter, dealing with a few arguments against this opinion which have a bearing on our conclusion.

In the first place, I adduce the words of Our Lord: 'Whose soever sins ye remit, they are remitted unto them' (John 20: 23) and 'Whatsoever ye shall bind on earth shall be bound in heaven' (Matt. 18: 18); and 'I will give unto thee the keys of the kingdom of heaven' (Matt. 16: 19). On the basis of these quotations the argument runs thus: these words are the same as those of my proposition, and therefore, if they are true, my proposition is true. This is confirmed by the fact that the forgiveness of sins properly means a release from a person's bondage of sins; it certainly does not imply simply the verbal declaration and confirmation of forgiveness for sins already forgiven, like the verbal recognition of a cancelled debt. And a further proof is that Christ had the power to forgive sins properly speaking, in the sense used in my proposition, and was empowered to delegate this power to the apostles; but He could hardly have used any clearer words than those about 'giving the keys' to signify that He did indeed delegate and give to them such a power.

§4 That Christ did have this kind of power, even in His human person, is certainly beyond doubt. He Himself said: 'But that ye may know that the Son of man hath power on earth to forgive sins (he saith to the sick of the palsy)' (Mark 2: 10; Matt. 9: 6; Luke 5: 24); and 'All power is given unto me in heaven and in earth' (Matt. 28: 18). And I have no doubt that He not merely had the power to 'declare' the forgiveness of sins, but also used the power actually to forgive them, when He said to the man sick of the palsy: 'Son, thy sins be forgiven thee'; and when He said 'her sins, which are many, are forgiven, for she loved much' (Luke 7: 47). Christ did not intend by this to demonstrate, dispute, or defend His possession of a power merely to declare forgiveness of sins. His words had the same force when He said 'your sins are forgiven' as when He said 'whose soever sins ye remit'; the meaning of the word 'forgive' (*dimittere*) is the same as that of 'remit' (*remittere*), save that the latter is perhaps better Latin. The same term is used in both passages in Greek.

The same thing²² is implied by the fact that the Lord prefixed the latter phrase with the words 'as my Father hath sent me, even so send I you' (John 20: 21), continuing immediately 'And when he had said this he breathed on them and saith unto them, Receive ye the Holy Ghost: whose soever sins ye remit', and so on. From this it is clear that He gave them such power as He had. Besides, what point could there be in giving them the gift of the Holy Spirit merely for loosing or forgiving sins in the court of the Church, or merely to demonstrate verbally the fact of forgiveness? Surely the apostles could only have understood by these words that they had been given the true power to forgive sins. I really do not see in what sense the Lord gave the keys of the kingdom of heaven, if a priest can never open the gates of heaven as these opponents of ours teach. What use do keys have, apart from locking and unlocking?

My second main argument runs as follows: if the keys can truly bind, but cannot forgive sins, then they ought not to be counted amongst the privileges and graces of the Church, but rather amongst its burdens, and indeed as one of its heaviest burdens. What benefit do we receive if the reason for the keys is to oblige us to confess sins (a most troublesome duty), if the result when you approach the keys with your sins will be that you fail to get either grace or forgiveness, and instead perhaps find yourself bound and weighed down (as even our opponents admit) with fresh sin? Why, then, do the saints raise this power to the skies with such accolades, why do they exalt it with such praises? Where lies the greatness of the Lord's reward to the prince of the apostles, when He promised to repay his famous confession of faith with the gift of the keys? You might as well call them fetters, or chains, or anything rather than keys, if we are to be bound by them, not loosed. If we took this side of the argument, our condition under the law of the Gospel would be much worse than under natural or Mosaic law.

My third main argument is as follows: if the meaning of the word 'absolve' was merely equivalent to 'declare absolution', the correct and legitimate form of absolution would be to say 'I make verbal declaration of the fact of your absolution.' But not even our opponents would dare use such a form of words. And this is confirmed as follows: if the priest merely made a verbal announcement of the fact of a sinner's absolution, for whose benefit would he do so? Not for the Church, certainly; and even less for God. It thus follows that the priest truly forgives the wages of sin; he does not merely announce the fact of that forgiveness. Either the words 'forgive' and 'absolve' must both be understood in this equivocal sense, or both together must be taken in their proper sense.

22. *Ad idem add. in marg. P, omm. LS.*

My fourth principal argument is as follows: sins are forgiven through baptism, and therefore also through the sacrament of penance. Our opponents give various answers to this argument. Some of them say that even in the adult sins are not forgiven through baptism;²³ others concede the point about baptism, but deny the point about the sacrament of penance. But since the same or even clearer words are used in the Gospels about the forgiveness of sins by the keys than about their forgiveness through baptism, it is altogether improbable and inconsistent to concede the point about baptism while denying it about the keys. As for the point that baptism gives true forgiveness of sins, I cannot see how it can be denied, even if we leave aside for the moment the universal and emphatic testimony of all the saints. And in this case 'forgiveness of sins' cannot possibly mean 'a verbal declaration of the fact of forgiveness', as our opponents would interpret it in the sacrament of penance. Therefore, if forgiveness of sins takes place according to Scripture, it must be forgiveness in the true and proper sense. Indeed, this is clearly an article of faith, since we say in the creed that 'we confess one baptism for the remission of sins'. And it is confirmed as follows: if original and venial sins can be taken away by the sacrament of penance (which even the authors of this opposing opinion confess), why this narrowing and restriction of its power with regard to mortal sin? In the Gospel we read of the sacraments being given for the forgiveness of sins absolutely, without distinction between original, venial, or mortal sins.

Fifth, if²⁴ none of the sacraments ever confer first grace on adults (since our opponents hold the same view of all the sacraments), why is it that all the saints and all the doctors teach and preach that the sacraments of the New Law are the cause of grace? They reply that grace is merely 'increased' by the sacraments. First of all, I cannot see how this is supposed to be a privilege of the sacraments, when grace is increased by every meritorious act. But, they say, 'grace is not increased (to use their own words) *ex opere operato*, by virtue of the performance of the rite'.²⁵ Let us grant this point for a moment. But how can this affect

23. *P propter baptismum : primo per baptismum L.S.* The reference is probably to the doctrines of the Anabaptists, who denied that baptism was a sign of membership in Christian society or rite of initiation, arguing instead that it must be a visible token of an inward regeneration which has already taken place; they hence declared that baptism cannot be given at birth ('dipping in the Romish bath'), but only after an adult conversion and commitment. Luther himself did not reject the sacrament of baptism.

24. *si om. P.*

25. Luther had expressed the view that the efficacy of the sacrament depends upon the faith of the recipient; the teaching of the Church was that the sacraments cannot be impaired by any human weakness, either of performer or recipient, but operate by

me? According to their opinion, I would gain as much by exerting a little more effort or attention in a meritorious act as I would 'by virtue of the performance of the rite'. What, then, is the great prerogative of the sacraments, if they can only confer on me a certain degree of grace, which I could obtain as well by a little bit of zeal and concentration in my actions? I cannot be persuaded that the sacraments do not confer something more than this.

But why force the sense of words and twist them from their proper meaning? To 'give' grace never means and never can be taken to mean 'increase' it. To 'be a cause of grace'²⁶ means to make the person a friend, to make him 'gracious' (*gratum*) to another; that is, to ingratiate or put someone in another's good graces who was not so before. Now to make a new friend in this way is quite a different thing from 'increasing' a friendship. Tush! the ancient authors never spoke in this way, as if they understood 'being a cause of grace' to mean 'to increase grace'.

Sixth, and finally, if the keys do not forgive sins, we are left with no argument in Holy Scripture for the existence of the sacrament of penance at all. Scripture says only that sins are forgiven by the keys. If this does not in your view require the conferment of grace, on the grounds that forgiveness implies only a verbal declaration, there remains no reason for positing a sacrament of penance. The only reason for positing such a sacrament is that Scripture declares that sins are forgiven by the keys, that this cannot take place without grace, and that therefore the keys confer grace; hence the institution of the sacrament. But this whole construction founders if you follow the opinion of our opponents.

§5

It seems to me altogether intolerable, therefore, to say sins are not truly forgiven by virtue of the keys, but are merely declared verbally to have been forgiven.

[Question 2, Article 3: Contrition is not sufficient for the forgiveness of sins]

But learned men also sin and go astray²⁷ in this disputation because they do not correctly understand the nature of contrition:

1. They think that contrition is sufficient for the forgiveness of sins, so that once contrition has been made, forgiveness and grace are due as

virtue of their own inherent power, *ex opere operato*. It was on this very point that Luther, in his interview with Cardinal Cajetan at the Diet of Augsburg (October 1518), declared that he would rather die than recant.

26. *P* *Esse enim causam gratie* : *Etenim gratiae LS.*

27. *LS* read 'otherwise intelligent and learned men sin and go astray a second time'.

if by right. It thus follows that they assert, against the apostle Paul, that a man's merit must be sufficient in order to gain first grace. They fail to take into account that, whatever the disposition of the sinner's heart, grace is granted with altogether as much freedom, or even more, and sins forgiven for as little payment, as was the case with the original gift of grace to Adam in his primal state. There is no need to invent any merit other than divine mercy, pure and simple; contrition constitutes no greater merit towards grace or the forgiveness of sins, than good works do towards predestination. (This belief was the major error of the Pelagians, if I understand aright.)²⁸

2. They go astray in the opposite sense, saying that contrition is necessary for the forgiveness of sins because even God himself could scarcely forgive sins without contrition.

- §6 BUT ON THE OTHER HAND the truth holds that *for the forgiveness of sins God left two effective remedies in the hands of the Church, contrition or the keys of the Church.*

I REPLY that it is sufficiently obvious from this that sins are forgiven by the keys of the Church in the same way as through contrition. It is therefore sufficient that a person should place no obstacle in the way of the keys; that is, that he should not be burdened by any past or future sin, or in other words that he should repent of his past sin and intend to avoid it in future. Even if he remains in a state of sin and repents in a manner insufficient of itself to assure forgiveness of his sins, a disposition of this kind is not required for forgiveness of sins. The sinner must only ensure that he places no obstacle in the way of the keys.

- §7 [Question 2, Article 4: The keys alone have the power to give absolution]

This, then, is the supreme benefit and privilege which Christ our Redeemer made the singular ornament of his Church in the New Law, and which is so celebrated by the oldest and most saintly Fathers: *that the keys of the Church are wholly sufficient to open the kingdom of heaven, the door to which can be opened in no other way.* Only they suffice for salvation. To me this seems beyond all doubt, especially since the

28. On the heresy of Pelagianism, see the Biographical notes, s.v. Pelagius. The voluntarism of Pelagius' doctrine made it attractive, if unacceptable (as Vitoria implies here, and in 3. 2 below), to natural law theorists.

Council of Florence has declared: 'the effect of the sacrament of penance is absolution of sins'. But the following points are argued against this true opinion:

1. Someone who approaches the sacrament of penance in mortal sin does not receive forgiveness of his sins, but instead commits a new sin. Hence the keys do not forgive sins. The confirmation of this is that otherwise it would be lawful to approach the keys while knowingly in a state of mortal sin.

2. If someone approaches the sacrament of penance after an act of contrition, it is still a true sacrament, and its form unequivocally signifies the same thing as it does in the case of someone who approaches it before contrition. But in this case the priest does not give absolution, but merely makes a verbal declaration that the sinner has been absolved. Therefore absolution should be understood in the same way as forgiveness of sins, as a mere verbal declaration.

3. Either a particular amount of compunction is sufficient to remove the obstacle to receiving grace, or it is not. Now if, on one hand, it is impossible to define an amount of compunction short of full contrition great enough to suffice by itself, the same insufficiency clearly holds true of any amount, and hence contrition will constantly be required.²⁹ If, on the other hand, any amount of compunction is sufficient, then compunction brought on merely by fear of the punishment will be sufficient.

4. The keys must clearly have the same power to retain sins as they have to remit them. But it is obvious that the keys cannot retain sins in any sense other than by declaring that they have not been forgiven by God, nor can they retain anything unless God has first retained it. Therefore they must give remission of sins in the same way, merely by making verbal declaration of God's forgiveness.

BUT ON THE OTHER HAND for the solution of these arguments, note in the first place the Subtle Doctor Duns Scotus' express statement that no other disposition is required for someone to receive grace through the sacrament of penance except his willingness to receive it and to subject himself to the keys (in *Sentences* IV. 14. ult., §3); and he says the same about the sacrament of baptism. Cajetan also expressly says of baptism that no compunction is required for forgiveness, even of mortal sins, but merely a willingness to receive baptism for the remission of sins (in *ST* III. 86. 2 ad 1); [and he ought consequently to say exactly the same of

29. *P* and *LS* have slightly different wordings in this sentence; I have tentatively adopted *P*'s, but have had difficulty in making sense of the argument.

the sacrament of penance, which is no less manifestly given for the remission of sins]³⁰ than baptism. But Cajetan denies to penance what he concedes to baptism – how consistently, he must judge for himself. St Thomas Aquinas also says that baptism ‘is administered in the form of ablution’, and is a form of ‘becoming’ (*generatio*), a change from spiritual non-being to spiritual being: ‘therefore there is no obstacle to approaching baptism in a conscious state of mortal sin’, whereas there is such an obstacle to so approaching the eucharist; the latter may only be given to the living, ‘since it is administered in the form of nourishment’ (*ST* III 79, 3 ad 2). By this reasoning it would certainly appear that the same must be said of the sacrament of penance, which was instituted for the waking of the dead [in sin]. Hence there will be no obstacle to approaching the keys in a conscious state of mortal sin. And it could be plausibly argued that if anyone were to approach the sacrament of penance with the intention of receiving forgiveness of his sins without any compunction whatever for his past sins, but with no complacency in them, so long as he had just the intention of avoiding his sins in the future, he would indeed receive forgiveness. I do not know whether this is true; I say only that it is a position against which it would be difficult to find forceful arguments.

In the second place, and this time without departing so far from the more accepted path of doctrine, I say that it is not lawful to approach the sacrament of penance in a conscious state of mortal sin; a person who does so does not obtain forgiveness of his sins.

§8 IN REPLY it must be noted that ‘contrition’ really means nothing other than compunction for our sins ‘for God’s sake’ (that is, for the fact that they are offensive to God), and an intention to avoid them in future. Nothing else is of any relevance to contrition. We may discard the anguished subtleties of the schoolmen’s disputations, which contribute little to the point, and are logical³¹ rather than theological. As far as I am concerned, there will never be any doubt that a person who feels compunction for all his sins, absolutely and because they are offensive to God, and who proposes for ever afterwards to keep all God’s commandments, receives forgiveness of his sins, so long as there is no other impediment to his doing so.

30. *P* omits the words between this occurrence of *sins* and the previous one, a clear case of omission by haplography; the missing sentence is supplied from *L*.

31. *P philosophicis* : *physicis L*. Though Vitoria talks of ‘schoolmen’, his main target is clearly still Luther’s attack on the sacrament of penance, and specifically his view of contrition (see the Glossary, *s.v.*).

§9 But there can be compunction like this which is nevertheless not contrition, because it is prevented from being so by other causes. Suppose someone feels this compunction but perseveres in a sin through ignorance, for instance because he keeps something which belongs to another, or continues in some other error? Even heretics or unbelievers, for example, can feel sorry for their sins, and 'for God's sake' too; and they intend to act accordingly in future. But this sort of compunction is not contrition in their case, nor sufficient for the forgiveness of sins – not because some greater or different compunction than theirs is required, but because of some quite different requirement which they have failed to fulfil. In other words, there is an external obstacle which in their case prevents compunction which would otherwise be sufficient in itself from being sufficient. There is no call to amend their compunction; if only they give back what does not belong to them, or renounce their mistake, that same compunction will become contrition. This is a point worth committing to memory in discussions of this point, to avoid falling into the trap of making unbelievable or unintelligible statements on matters which are necessary for salvation.

Following the premiss enunciated above, I argue as follows. First, if someone who approaches the sacrament of penance knows and is conscious that he feels no compunction for his past sins, he does not obtain forgiveness of his sins, even if he intends to make future amendment; on the contrary, he commits a mortal sin.

Second, if such a man feels compunction, but understands that he does not feel sorry 'for God's sake', but for some other reason such as fear of punishment in Hell, then even this compunction is not sufficient, because he is not sorry for having offended God. It is irrelevant that he feels sorry, if he is not sorry for having offended God;³² it is the same as if he were not sorry at all. He too commits a mortal sin by approaching the sacrament of penance.

Third, in whatever way he feels compunction, if he thinks himself in any way to be still in mortal sin and not repentant, this too is clearly insufficient. And so I concede that to approach this sacrament in a conscious state of mortal sin is a fresh sin, which constitutes an obstacle; but from this we may deduce, not that the keys are insufficient, but that the sinner who is not sorry and will not feel sorry because he has offended God is to all intents and purposes complacent in sin.

Fourth, if he believes he is sorry 'for God's sake' and proposes to avoid sin in the future, he always obtains grace, unless he places some obstacle of a different origin in the way, as described above; for

32. This phrase is omitted by *P*, again by haplography.

example, if he perseveres in some sin. But he can never fail on the grounds of insufficient compunction.

'But,' you will say, 'a man in this position would already have obtained grace before the administering of the sacrament, since (according to your argument) his compunction is true contrition.' To this, I make my fifth point: let us grant that a person believes he is sorry because his sins are offensive to God, when in fact the real cause of his compunction is something different. Although he may indeed experience occasional feelings of compunction, he may all the same remain unaware whether or not he is sorry because he has offended God. As Augustine³³ says, 'the mind darts ahead, while our mood trails slowly behind, or is left behind altogether'. So it can happen that a person thinks they are sorry for God's sake when they are not sorry, or not sorry for God's sake. In the case of a such a person, forgiveness of sins comes about by virtue of the keys.

§10 Sixth, it follows from the previous statements that all the compunction which a sinner thinks is contrition, and that alone, is sufficient for the forgiveness of sins with the aid of the keys; sufficient compunction, that is, so long as there is no external impediment or negligence in the examination of conscience so serious as to lead to some omission. By this I mean that if someone shows no care or attention in examining the state of his conscience, but wilfully assumes that he has made sufficient contrition, he will be judged as if he had not repented. But if he believes that he has made sufficient contrition in good faith after a reasonable examination, then even if he is wrong about this he can undoubtedly obtain forgiveness of sins with the sacrament of penance.

TO THE FIRST AND THIRD³⁴ ONE MAY THEREFORE SAY that the answer is obvious from the preceding statements. But this conclusion is further opposed by the following common argument: a man who believes himself to have repented sufficiently is either vincibly or invincibly ignorant. If his ignorance is invincible, he cannot be required to show more compunction; therefore he has sufficiently fulfilled what was required of him, and his sins must already have been forgiven. But if his ignorance is vincible, then by approaching the sacrament in what amounts to mortal sin he is not pardoned. Either way, you do not have a man who receives first grace from the sacrament of penance.

The reply to this is twofold. First, if the man's ignorance is invincible, you have argued that his sins must already have been forgiven; but I

33. Augustinus *om. P.*

34. *L. ad primum & tertium : ad 1m et 2m et 3m argumentum P.*

deny the validity of this inference. It follows only that he does not commit a new sin by the omission of contrition. Second, and more to the point, if the man's ignorance is vincible, you have argued that he commits a sin by approaching the sacrament; but I deny this inference. Only the man who knowingly approaches the sacrament in mortal sin commits any irreverence. It is as if a man were to celebrate mass without an altar; if he did so in ignorance, however crass, he would not be committing a sin. You may say, in that case, that such ignorance is vincible in respect of the man's examination of his sins, or in respect of the requirements concerning contrition, if there are any, but invincible in respect of the sacrament. But there is nothing strange in that. Some sort of ignorance might sometimes be an excuse for one man, but not for another; for example, it is well known that ignorance may excuse a man administering a sacrament in mortal sin, whereas it cannot excuse a man who receives it. A greater examination of conscience is required before receiving the eucharist than before administering it, even though some examination of conscience is required for both.

TO THE SECOND³⁵ ONE MAY SAY that when someone approaches the sacrament of penance after contrition, he is truly absolved; the priest passes a sentence sufficient to put that person in grace, even if they were not previously in grace.

TO THE FOURTH ONE MAY SAY that 'to retain' means 'not to pardon', not (as they claim) 'to make verbal declaration that sins have not been forgiven'. It may happen that sins are not forgiven solely because they have not been absolved by the keys, as explained above. Besides, since every sinner is required to come to the keys (as we are supposing for the present), even forgiveness which comes about through contrition depends on the keys, indeed comes about by virtue of the keys, just as the grace which was given before Christ's passion came about by virtue of Christ's passion. And finally, whatever the truth of this matter, even if we accept that 'to retain' means 'to make a verbal declaration', it is not necessarily the case that 'to forgive' means 'to make a verbal declaration'. The only point I wish to make is that words should be understood in their proper sense, so that 'forgive' means 'forgive' as 'retain' means 'retain'. So if retention cannot take place without a verbal declaration, 'retain' will mean 'to make a verbal declaration'; but forgiveness can be otherwise, and therefore 'to forgive' must be understood otherwise.

FROM THIS QUESTION it emerges, therefore, that *sacramental power has the ability to produce some spiritual effect*. I do not mean by this, however,

35. 3m P.

that it can have no other kind of effect; but this is the chief effect, and the one which is supported by the clearest scriptural authority. Besides this, all consecrations of bishops and priests, in which a purely and truly spiritual effect is also present, depend on sacramental power. This is all I have to say as far as the effect of sacramental power is concerned.

There remains the question of jurisdictional power, and namely whether excommunication is a spiritual effect or has a spiritual effect. But on this I have spoken at length in my lectures on the fourth book of Lombard's *Sentences*, on the chapter 'Of the keys' (IV. 18 §*Claves*), to which I refer you.

Question 3: By what law this power was begun

Having concluded the part of my disputation on this power which deals with its nature *per se* and its general effect and purpose, it seems worthwhile to turn next to some remarks about the *efficient cause and origin* of the Church's power. According to Aristotle's teaching, we can best find out about this power by finding out about all its causes.³⁶ Next in order of treatment after the discussion of its final cause, which is the most important, comes its efficient cause or author. The question is therefore *by what law this ecclesiastical power was introduced*.

Question 3, Article 1: This whole ecclesiastical power in all its amplitude was not and could not be grounded in positive law

- §1 This proposition is manifest from what has already been said. The Church's power has several spiritual effects which exceed any human power. Among such effects is the forgiveness of sins, according to the remark [of the scribes and Pharisees: 'Why does this man thus speak blasphemies?] who can forgive sins but God only?' (Mark 2: 7; Luke 5: 21); and 'Who is this that forgiveth sins also?' (Luke 7: 49) – reproaches which would have been justified, had the person they were addressing not happened to *be* God. Others are grace, the consecration of the most holy eucharist, and other effects of this kind. All these powers exceed any human faculty, and therefore cannot have been grounded in human law. And this is confirmed by the fact that they cannot have originated in civil law. As has been shown above, ecclesiastical power is distinct

36. *Physics* 198^b1 – 199^b32; compare *On Civil Power* 1. 1, footnote 6.

from civil power; but ecclesiastical law presupposes the existence of some competent power; therefore ecclesiastical power cannot have arisen from positive law.

Secondly, it is obvious because Christ, who is true God, first gave the keys of the kingdom of heaven (Matt. 16: 19).

Question 3, Article 2: Nor could this whole power be grounded in natural law

This proposition is obvious from the same argument, because ecclesiastical power has an effect above the whole of nature; therefore natural law cannot have instituted this power.

§2 The difference between civil power and ecclesiastical power lies in the fact that civil power is grounded in the commonwealth, because it serves the natural purpose of the commonwealth, as I have discussed elsewhere (*On Civil Power* 1. 4); ecclesiastical power, on the other hand, exceeds not only the private authority of individuals, but that of the whole world. And in the same way natural law, although it is a divine law, does not extend beyond the limits of nature, and so cannot extend as far as the limit and end of this spiritual power. And this is confirmed by the fact that natural apprehension (*cognitio*) does not extend to the effects of this power, and therefore neither can natural law or natural power. Again, this power decides that a man is in grace, so that if this power were natural man could obtain grace by natural means; but this is the error of Pelagianism condemned by the Church, and contradicts Paul's doctrine of justification by faith (Rom. 3, 4, and 5).

§3 **Question 3, Article 3: Nevertheless, ecclesiastical power might, in some of its aspects, have arisen from natural or positive law, that is in some effects and actions of its power**

The proof of this proposition, as I have said above, is that, even if we were to restrict our considerations to natural law, both types of power would be necessary in the commonwealth. Even in natural law alone it is possible to give an intelligible proof that 'God is, and that He is a rewarder of them that diligently seek Him' (Heb. 11: 6). The Apostle shows His eternal power and Godhead to have been made manifest even to [natural] philosophers (Rom. 1: 19-20). It follows from this that God must be worshipped by mortal men; and even if there were no particular ordinance from God concerning this, some members of the

commonwealth could have been deputed solely to care for the ministry of divine worship, with overall authority for sacred matters. Their power would in that case be spiritual, not civil, just as is in fact the case by divine law. Indeed, it is for just this reason that the wisdom of the philosophers is condemned by the Apostle: 'because that, when they knew God, they glorified him not as God, but changed the glory of the invisible God into an image made like to corruptible man, and served the creature more than the Creator' (Rom. 1: 21–5). Therefore, just as we read of priesthoods, pontiffs, and sacrifices to false gods having been instituted by human agency amongst the gentiles, so by the same agency sacrifices and priesthoods could have been instituted for the worship of the true God; and this would have been a true spiritual power, distinct from civil power. Indeed, as I shall explain in a moment, this sort of spiritual power, founded solely by human authority, has sometimes been introduced amongst the true worshippers of God.

- §5 **Question 3, Article 4:³⁷ All ecclesiastical power in the Old Testament (that is, after the freeing of the people of Israel from their Egyptian bondage) existed by positive divine law³⁸**

This conclusion needs no other proof than the text and order of the Pentateuch itself. The whole book of the Law was given by God. Stephen said of it that it was given 'by the disposition of angels' and that Moses 'received the lively oracles to give unto' the people (Acts 7: 53, 37–8); Paul said the Law was 'ordained by angels in the hand of a mediator' (Gal. 3: 19), and that God 'at sundry times and in divers manners spake in time past unto the fathers by the prophets' (Heb. 1: 1). Christ himself said, speaking to the Jews, 'ye have made the commandment of God by your tradition of none effect' (Matt. 15: 6), meaning the commandment to honour thy father and mother. It was the error of the Manichaeans to believe that the Law of Moses was not God's law; but this fact is often stated in the Pentateuch itself, which is full of phrases such as 'if you do the judgment of the Lord and keep His commandments', and so on.

In the Law is contained the whole order and rationale of divine worship by pontiffs, priests, and ministers, as shown above. Therefore the

37. *L* here inserts Article 6 (see below), and renumbers the propositions accordingly; the same order is followed by Getino in *Vitoria* 1933–5: II. 42–3. I follow the order of *PS*.

38. *LS* invert the order of the citations in this paragraph.

whole of that power concerning divine worship, which was solely spiritual power, was introduced by positive divine law. In *Exod. 24: 7* we read that Moses 'took the book of the covenant, and read in the audience of the people, and they said, All that the Lord hath said will we do, and be obedient'; and Moses said a little further on, 'behold the blood of the covenant, which the Lord hath made with you', which Paul put even more clearly in *Heb. 9: 20*: 'This is the blood of the testament which God hath enjoined unto you.'

- §6 **Question 3, Article 5: All the power instituted by divine law in the Old Testament could have been instituted by the people of Israel on their own authority, even if it had not been instituted by God**

This is proved by the third proposition above (3. 3). Once God was recognized in His divine majesty, whether by the illumination of nature or by the light of faith, the people were able to set up pontiffs, priests, sacrifices, and all the ceremonies of divine worship, though they could not perhaps have set up all the figures and symbols of future things, being unable to discern the future clearly or institute apt and convenient figures for portending and announcing it. In this respect, the verses of *Heb. 9: 13–14* are relevant which say: 'If the blood of bulls and of goats, and the ashes of an heifer sprinkling the unclean, sanctifieth to the purifying of the flesh, how much more shall the blood of Christ?' These words make it clear that the Old Law only purifies the flesh.

- §4 **Question 3, Article 6: All the spiritual and ecclesiastical power which now resides in the Church exists either mediately or immediately by positive divine law³⁹**

The proof and explanation of this conclusion, as will be discussed later (*II On the Power of the Church 4*), lies in the fact that all ecclesiastical power derives from the apostles, who in turn had their power from Christ our Lord, very God; therefore all ecclesiastical power exists by positive divine law.

But I said 'mediately or immediately' not only because the apostles had it first and then passed it on to their successors, but also because I

39. This article is transposed by *L* to a position preceding Article 4 (see footnote 37 above). I have kept the order of *PS*, but retained the marginal paragraph numbering of Boyer's edition.

do not deny that there are some powers in the Church which exist solely by [human] positive law. I shall speak of these a little later. But such powers, for instance the power of minor orders and perhaps others to which I shall return in a moment, themselves have their origin in ecclesiastical power, which exists by divine law.

This is confirmed by the authority of the Apostle: 'But unto every one of us is given grace according to the measure of the gift of Christ'; and 'he gave some, apostles; and some, prophets; and some, evangelists; and some, pastors and teachers, for the perfecting of the saints, for the work of the ministry, for the edifying of the body of Christ' (Eph. 4: 7-12). All ecclesiastical power is either one of the powers here listed by the Apostle, or some other power which depends on them.

Question 4:⁴⁰ When this power began

Following the due order, we may now discuss the question of *when this power began*, and whether it was at the beginning of the world.

§1 Question 4, Article 1: Some spiritual power could have existed in the state of innocence

This first proposition is soon proved. It is beyond doubt that in the state of innocence divine worship existed not only in its interior manifestation, but also in exterior forms. Since man is composed of body and soul, it is reasonable that he should worship God not only with his soul and intellect, but also with his exterior bodily actions; and this is true in every state. As far as the state of innocence goes, it is to be noted that although there then existed no dominion (*dominium*) or coercive higher authority (*praelatio coerciva*) – this explains the later command that the husband should rule over the woman (Gen. 3: 16) and why, when the human race multiplied, there arose rulers and the division of property and goods – directive and governing power nevertheless did exist. As there would have been teachers for educating and instructing the young, so also there would have been men set up to direct things; otherwise mere confusion of goods and formal disorderliness would have ruled, as each man lived by different customs according to his whim, even if all

40. P 3. questio.

had lived righteously. By the same token, a commonwealth where each man worshipped God with his own rituals without any consensus or uniformity of divine rites would not have been fitting. There can be no doubt at all, therefore, that if the state of innocence had continued undisturbed, constitutions and ordainments would have arisen for the conduct of civil life, and also most especially for the conduct of spiritual life and divine worship. And there would have been men set up to take care of the things to be ordained, and their power would have been spiritual, since it would exist for spiritual purposes. It is unimaginable that all this could have existed in the beginning without any exterior exercises or works.

§2 **Question 4, Article 2: Immediately after the Fall, spiritual power was in the law of nature**

The proof is, as St Thomas says in *ST I-II* [103. 1], that supernatural faith has been necessary in every age and time; so even then there must have been some providence guiding towards supernatural ends, and men needed to direct their actions not only to a natural and political end, but also to a supernatural and spiritual end. Consequently some form of worship of God, who is the author and lord from whom alone we may hope to obtain salvation, must necessarily have existed. But just as human works cannot properly be ordered towards human ends except in a commonwealth where some command and others obey, so the works of men cannot conveniently be ordered towards the supernatural end of which I am speaking unless some men are set up to take care of the business of leading men towards this end; and this is a spiritual power. Therefore spiritual power has existed from the beginning. And this is confirmed by the fact that the Church, as a spiritual community ordained towards a supernatural end, has always existed; but no commonwealth can be self-sufficient (*perfecta*) without magistracies and authorities, therefore ecclesiastical power has always existed.⁴¹

A second proof is that Abel was clearly a priest, since we read of him that he offered a sacrifice which was acceptable even to God (Gen. 4: 4, and Heb. 11: 4). Hence Augustine wrote that 'there were three things above all which testified to Abel's righteousness, his virginity, his priesthood, and his martyrdom, and in all of them he prefigured Christ' (*Ad Orosium V*).

41. For the use of the word *perfecta* in this sense, see *On Civil Power* 1. 2, footnote 18.

A third proof that there was a true spiritual power under the law of nature is that Melchizedek 'was a priest of the most high God' (Gen. 14: 18). Commentators identify him as Shem, son of Noah; hence some weighty doctors and authors also assert that under the law of nature priests were simply first-born sons (*ST* I-II, 103. 1 ad 3). That Melchizedek's was real priesthood is certain, however, not only because Abram received his blessing (Gen. 14: 19), but even more because Christ our Lord is called priest and 'high priest for ever after the order of Melchisedec' (Ps. 110: 4; Heb. 6: 20).

- §3 Question 4, Article 3: Although all the spiritual power under natural law could have existed solely by human authority, it is nevertheless likely that some spiritual authority and power, some sacrifices and sacraments and other ceremonies concerning divine worship and the spiritual salvation of souls were set up by some special divine revelation, or by some divine instinct or motion

The first part of this proposition is clear from what has been said already. As I shall make clear in a moment, before the advent of our Lord no power had any effect which in fact exceeded human faculties. Therefore all spiritual power could have been set up by human authority, and if there was any sacrament for wiping out original sin, it needed no divine authority. And since it had no real efficacy other than as a testimony of faith, and there was no specific sign established by divine law against original sin, any protestation of faith was sufficient, at least as far as divine law was concerned; for we may suppose that human statute or custom had established some special rite or other for purging original sin.

The second part of the proposition is proved as follows. Since faith has always been necessary, and has never been lacking in any age, as shown above, it seems that revelation was accomplished chiefly with the aim of instituting the worship of God, which is the most important part of true religion and the life of the faithful. This is confirmed by the fact that the Lord was so careful to institute the correct form of divine rites in the Old Law, with so many priesthoods, ministries, and solemn ceremonies; this being so, it is not credible that before giving the Law He should have failed completely to instruct His worshippers, either by revelation or by some inner stirring, how they were to worship Him piously and religiously – though this form of worship was doubtless much simpler than that laid down in the written Law.

§4 Question 4, Article 4: Some spiritual power certainly existed in Mosaic law

This proposition is clear from the authority of the Pentateuch itself, which contains so many traditions about the priesthood and spiritual ministry. That this power and dignity was truly and properly spiritual is shown first of all by the authority of Paul: 'For the priesthood being changed, there is made of necessity a change also of the law' (Heb. 7: 12). Here Paul is deliberately seeking to prove that Christ's priesthood is more preeminent than the priesthood of the Old Law. That would be a vain undertaking if the priesthood of the Old Law had not been a true priesthood; that is, a true spiritual power and authority. Furthermore, the priesthood continued after the institution of kings, as we see in the figure of Samuel (1 Sam. 10). Hence priesthood was a power distinct from civil power; therefore it was a spiritual power. And the Gospel tells us that Caiaphas prophesied, being high priest that year (John 11: 51); from which it is apparent that the high priesthood was a true spiritual authority and rank.

§5 Question 4, Article 5: Nevertheless, I say that properly and perfectly spiritual authority, which is that of the keys of the kingdom of heaven, never existed in the law of nature, nor in the written law, before the advent of our lord and redeemer Jesus Christ

The first proof of this proposition is that after the sin of our first parents, the kingdom of heaven was closed until the coming of Christ; therefore the keys did not exist before His coming. That is why He is described as 'he that hath the key of David, he that openeth, and no man shutteth' (Rev. 3: 7).

The second proof is that all the priesthood of the Old Law, with all its sacrifices, offerings, and sacraments, could not confer grace, because they did not justify. As Paul says: 'therefore by the deeds of the law there shall no flesh be justified in his sight' (Rom. 3: 20), and 'if righteousness come by the law, then Christ is dead in vain' (Gal. 2: 21); and 'if the blood of bulls and of goats, and the ashes of an heifer sprinkling the unclean, [sanctifieth to the purifying of flesh, how much more shall the blood of Christ]' (Heb. 9: 13). In various other passages he not only testifies to this truth, but proves it. Thus it follows that those priests had neither the keys, nor any true spiritual power. From this, I say that they were unable to confer any purely spiritual effect; all their business was temporal and material, merely a sign and outward form of

spiritual things. The Levites only held the keys and care of the material temple; they could neither forgive sins, nor have any other purely spiritual power. Everything they did was merely an intermediate step towards the grace of the New Testament. Therefore their power was spiritual, but in quite a different sense from the ecclesiastical power in the evangelical Law.

§6 On the other hand, whether or not the priests of the Old Law had the power to carry laws and make judgments binding in the court of conscience is a question which may be justly debated. Besides the moral precepts of the Pentateuch, the Lord dictated all those judicial and ceremonial instructions which define everything to do with divine worship in such minute and particular detail; hence there was no room for further precepts without swelling the obligations to such numbers as to be not merely burdensome but actually intolerable. In the law of the gospels, on the other hand, our Lord left some considerable liberty, with very few precepts; hence it was necessary to leave the pontiffs some authority to carry such further laws as might be useful and convenient for the governance of spiritual things.

Yet despite the judicial precepts of the Old Law, the kings retained the power to legislate. It seems, therefore, that we must also say that the priests of the Old Law had the authority to make precepts and laws, or at least the coercive power to institute ministers and Levites and to oblige people from time to time to make sacrifices,⁴² offerings, and all the other things laid down by the Law in divine worship. That is what is meant by having authority and being high priest; and we ought to grant that his precepts were no less binding than those of the kings. That they made such precepts and constitutions is clear from the passage 'thus have ye made the commandment of God of none effect by your tradition' (Matt. 15: 6). Chrysostom clearly interprets this as meaning that their commands were true commands. The point is confirmed by the passage on the priesthood of the Levites: 'And the man that will do presumptuously, and will not hearken unto the priest that standeth to minister there before the Lord thy God, or unto the judge, even that man shall die, and thou shalt put away the evil from Israel' (Deut. 17: 12).⁴³ From this it is clear that they were bound to obey the priest under pain of mortal sin, since the death penalty is not appointed for any lesser crime. And that their precepts were indeed binding in human law is clear from the following: 'The scribes and the Pharisees sit in Moses' seat; all therefore whatsoever they bid you observe, that observe and

42. *LS sacrificia : sacerdotia P.*

43. *P* places this sentence later, at the end of the article.

do, but do not ye after their works, for they bind heavy burdens and grievous to be borne, and lay them on men's shoulders, but they themselves will not move them with one of their fingers' (Matt. 23: 3-4). This obviously cannot refer to the precepts of the Law, which were the precepts of divine wisdom, 'which ordereth all things graciously' (Wisd. 8: 1), and could not therefore be called 'heavy and grievous to be borne'. Therefore it must refer to the precepts of the high priests and priests. This at any rate is the interpretation of the *Glossa*, though Chrysostom interprets the passage as referring exclusively to the Law.

- §7 **Question 4, Article 6: The spiritual power of the Old Law has utterly expired and become obsolete, and has not survived in evangelic law; nor are the priests of the New Testament successors of the Mosaic priesthood, but theirs is a completely new power**

The proof of this proposition is that evangelical power is wholly derived from the priesthood of Christ; but Christ was priest not after the order of Aaron, but after the order of Melchisedec (Heb. 7: 11), and Paul goes on to show that this, being a different priesthood, was a different law (*ibid.* 7: 12-28). Hence it follows that the old priesthood passed away: 'and in the midst of the week he shall cause the sacrifice and the oblation to cease, and for the overspreading of abominations he shall make the sanctuary desolate' (Dan. 9: 27).

- §8 **Question 4, Article 7: All perfect and properly spiritual authority began with the coming of Christ**

Christ was the first author and giver of the keys and of spiritual power, and by His own authority could confer grace and forgive sins by the power of His excellence. This is clear from Mark 2: 10, Luke 7: 47, and Matt. 28: 18, where He says: 'All power is given unto me in heaven and in earth'. And He left this power to His Church ~ not, of course, the same as His own, but limited and in certain ways restricted by the sacraments, as is clear from Matt. 12 and 18, John 20-1, 1 Cor. 5, 2 Cor. 2, and Heb. 13: 17 'Obey them that have the rule over you, and submit yourselves'⁴⁴. Also Luke 22: 19 'This do in remembrance of me'.

AT WHAT TIME HE GAVE THE KEYS is, nevertheless, a question not altogether settled amongst the doctors. Fitzralph claims that His power

44. P places this sentence before the preceding one.

was not given in any of the passages above, nor even in the passage in John 20: 23 where He said: 'Whose soever sins ye remit, they are remitted unto them' (*De quaestionibus Armenorum* 11. 14–15).⁴⁵

1. He adduces as proof the words of Peter to the disciples concerning Judas, 'for he was numbered with us, and had obtained part of this ministry', which leads into the citation of the prophetic words of the Psalm, 'Let his habitation be desolate, and let no man dwell therein, and his bishopric let another take' (Acts 1: 16–17, 20; = Ps. 69: 25, 109: 8); and they immediately prayed, and said: 'Thou, Lord, which knowest the hearts of all men, shew whether of these two thou hast chosen, that he may take part of this ministry and apostleship, from which Judas by transgression fell' (Acts 1: 25). From this, according to Fitzralph, it is established that Matthew had nothing which had not previously been lost by Judas; hence all this power must have been given before the resurrection.

2. Likewise it is said that 'Thomas, one of the twelve, was not with them when Jesus came' and said 'Whose soever sins ye remit' and so forth (John 20: 24, 23); so Thomas would not have received the power.

3. Again, it is said that the disciples 'anointed with oil many that were sick' (Mark 6: 13), but this is a ministry which belongs to the elders of the Church, as shown by Jas. 5: 14. Therefore there were elders of the Church before the resurrection, and indeed, by the same authority, even before the Lord's Supper.

4. His proof that power was not given in the passages in Matt. 16 and 18 is that sacramental power (*potestas ordinis*) must be given all at once, otherwise ordination would be not a single sacrament but several. In the opinion of the other doctors, however, the apostles received the sacramental power of consecrating the body of Christ at the Last Supper; *ergo*, they cannot have had the keys before that, since these things must be given together.

5. Fitzralph further believes that all power was given when the Lord ordained the disciples as apostles, where we read that He went up into a mountain, and called unto Him whom He would, 'and they came unto him; and he ordained twelve, that they should be with him, and that he might send them forth to preach, and to have power to heal sicknesses,

45. Fitzralph 1512: fol. lxxvii. The question of when power was given to the apostles involved 'the whole question of the relationship between authority inhering in the Universal Church and the powers attributed to its earthly head, the pope'; the fact that Peter alone received the keys before the resurrection was taken by canonists to indicate his primacy (*Decretum* D. 21 d.a.c. 1; see Tierney 1955: 30–6). Vitoria was later, however, to dismiss the whole argument as irrelevant (*II On the Power of the Church* 4. 1–3).

and to cast out devils' (Mark 3: 13 – 15). The keys concern the authority, both sacramental and jurisdictional, of the apostolate; therefore they must have received the whole power at that moment. This is confirmed by the fact that Paul is nowhere said to have received any other power than that of apostleship; in scripture we read only that he was Christ's chosen vessel to preach and bear His name before the Gentiles (Acts 9: 15); and the other apostles received only as much as Paul. Paul calls himself merely 'a chosen apostle'; he received nothing from the other apostles, as he himself testifies with the words 'they who seemed to be somewhat added nothing to me', and 'He that wrought effectually in Peter to the apostleship of the circumcision, the same was mightily in me towards the Gentiles' (Gal. 2: 6 – 8). But Paul had all power; therefore when the disciples were made apostles they too received all spiritual power.

- §9 BUT ON THE OTHER HAND, first: it makes little difference when the apostles received the keys, whether before or after the passion, so long as it is established that they did receive them, as it clearly is by the Gospels. Second, it is probable that they received the power of the keys not all at once, but piecemeal. Thus they seem to have received jurisdictional power in the external court of the Church at Matt. 18: 15 – 19, and sacramental power to consecrate the body of Christ at Luke 22: 19 – 20, but the power of the keys in the inner court of conscience at John 20: 23. Peter seems to have received the primacy and plenitude of power at John 21: 15 – 17.

AS FOR Fitzralph's assertion, that if the apostles had not received all power at once their ordination would not have been a single sacrament, it does not necessarily follow. Even though Christ did not give the whole power of the keys at once or in one place, it does not follow from this that pontiffs may also divide these authorities; they must give the whole power at once in one sacrament of ordination. Indeed, it might be impossible to hand on such power piecemeal.

But perhaps it would be more satisfactory simply to say that whatever Christ said or did concerning this power before the resurrection should be understood as referring to the future (that is, after the resurrection). That is how the promise of the keys in Matt. 16: 18 – 19 is couched, all in the future tense: 'upon this rock I will build my church; and I will give unto thee the keys of the kingdom of heaven'. This clearly refers to a future institution. Hence the apostles had no keys before the words 'Receive ye the Holy Ghost; Whose soever sins ye remit, they are remitted unto them' (John 20: 22 – 3). Indeed, I do not think the

apostles can have exercised any jurisdiction even in the inner court of conscience before the resurrection. And I doubt whether they could consecrate the body of Christ; though this latter power may seem more probable than the former, the contrary is not improbable. It is impossible to come to any certain conclusion on these questions; what is certain is that the apostles had the keys and all spiritual power from Christ.

Question 5:⁴⁶ Whether spiritual power is above civil power

I have now discussed – not indeed as deeply as the matter merits, but as far as time and my limited wit allows – the question of spiritual power in general, and its purpose, origin, and author. Before getting down to a discussion of the objects of this power, however, I hope it will not be irrelevant if I first make some observations about the comparison between civil and spiritual power. There are two major questions I have chosen to dispute. The first is *whether civil power is subject to spiritual power*; the second, *whether on the contrary ecclesiastics are subject to civil power*. Both questions have a number of far from trifling opponents and supporters.

§1 The first question, therefore, is *whether spiritual power is superior with regard to civil or temporal power*. For the present I make the supposition, to be proved below, that the pope is the supreme ruler of all ecclesiastical power; hence the question is really *whether the pope is superior to all temporal rulers and powers*. Now I shall not here recall the discussion about which of the two powers is the more perfect, since it is incontrovertible that spiritual power is far more excellent and more exalted in its supreme dignity. Faculties, skills, and capabilities (*potentiae*) must be judged, like all other things ordained to a particular end, by their purpose; and the purpose of spiritual power far excels that of temporal power, in the measure that perfect bliss and ultimate felicity excell all human or earthly happiness. As Innocent III says in the decretal *Solita*, 'spiritual things are worthier than temporal things by as much as the soul is more excellent than the body' (X. 1. 33. 6). The Apostle proves this preeminent dignity of the evangelical priesthood by remarking that Melchisedec, priest of the most high god, blessed Abraham (Heb. 7: 1 = Gen. 14: 18–19). No one can deny that he who blesses is greater than he who is blessed; but Abraham was the

46. P 4. questio.

temporal ruler, or personified temporal power. Therefore spiritual power is altogether greater and more revered than temporal power, and should be served with greater devotion and ritual.

Let us leave this comparison aside, therefore, and proceed to the other point, namely *whether the pope is superior to the civil power in jurisdiction and authority.*

Now there are some who are so carried away by their solicitude and care for the papacy that they believe all kings and other temporal rulers to be no more than vicars or representatives of the Roman pontiff, mere ministers, as it were, of papal power. They affirm that all temporal power derives from the pope in Rome. Their opponents, on the other hand, remove rulers from ecclesiastical power to such an extent that they leave almost nothing at all to the power of the Church, expressing the wish that all cases, even spiritual ones, should be brought before the civil courts, and there settled.

I shall reply to the proposed question with a number of propositions which steer a middle course between the disputants, with arguments favouring both kinds of power.

§2 Question 5, Article 1: The pope is not lord of the whole world

This first proposition is proved by the words: 'Ye know that the princes of the Gentiles exercise dominion over them, and they that are great exercise authority upon them, but it shall not be so among you' (Matt. 20: 25–6; Luke 22: 25–6). And immediately after this, the words: 'the Son of man came not to be ministered unto, but to minister, and to give his life a ransom for many' (Matt. 20: 28). Here the Lord seems to have forbidden his disciples to seek to be lords even in private life, so far was he from giving them power over the whole world. This passage is adduced by Bernard of Clairvaux when he says:

What else did the holy Apostle leave you? 'I give you', he said, 'what I have' (Acts 3: 6). And what was that? One thing I know; 'silver and gold had he none.' These, I grant, you may claim by any other argument you like, but not by apostolic right, for Peter could not give you what he did not have. He gave what he had, 'the care', as he said, 'of all churches' (2 Cor. 11: 28). And did he not give the power of condemnation? Listen to his own words again: 'neither as being lords over God's heritage, but being ensamples to the flock' (1 Pet. 5: 3). Lest you think this was said in mere modesty, not in truth, there are the words of the Lord in the Gospel: 'the princes of the Gentiles exercise dominion over them, and they that are great

exercise authority upon them; but it shall not be so among you' (Matt. 25-6; Luke 22: 25). This clearly prohibits the apostles from exercising dominion. How, then, do you dare arrogate to yourself both the apostleship of the lords and the lordship of the apostles? You are clearly prohibited from one of the two; if you try to have both together, you will destroy each in turn. Otherwise, believe me, you will not be excepted from the number of those of whom God said 'They have set up kings, but not by me; they have made princes, and I knew them not' (Hos. 8: 4). The apostolic example is that domination is banned, ministry planned.

(*De consideratione ad Eugenium III* 2. 9-11)

And below he adds: 'Go forth into the field, the field is the world, but go not as a lord, but as a steward.'

Furthermore, the pope confesses that he received dominion (*dominium*) of some of his lands from the emperor in the canon *Futuram* (*Decretum* C. 12. 1. 15). In the canon *Cum ad uerum* (*Decretum* D. 96. 6), Pope Nicholas says: 'After the coming of the Truth the emperor did not seize the rights of the papacy to himself nor did the pope usurp the title of the emperors.'

Besides, the pope has no dominion (*dominium*) in the lands of the infidel, since he has power only within the Church; as the Apostle said, what has he to do to judge them also that are without? (1 Cor. 5: 12). Unbelievers possess true dominion, since the Apostle teaches that even the faithful must pay them tribute (Rom. 13: 6), and says that their power is ordained of God and that their laws must be obeyed. But they do not have their dominion from the pope, since it is clear he would rather they did not have it - and indeed makes efforts to overthrow pagan empires. Therefore the pope is not lord of the whole world.

It is clear, therefore, that the many canonists such as Guido de Baysio, Nicolaus de Tudeschis, Agostino Trionfo d'Ancona, Silvestro Mazzolini da Priero, and others who think that the pope is lord of the whole world properly by temporal dominion (*dominium*), and that he has temporal authority and jurisdiction over all princes in the world, are wrong. I have no doubt their view is manifestly false.⁴⁷ Although they for their part assert no less that it is manifestly true, I believe their argument to be no more than a wilful twisting of the evidence made in obsequious flattery of the papacy. More sensible jurists, such as

47. Vitoria was to return to this question, with many of the same arguments, in *On the American Indians* 2. 2; his chief source in the following pages is Juan de Torquemada's *Summa de ecclesia* II. 113.

Johannes Andreae and Huguccio of Pisa,⁴⁸ and even St Thomas (always most solicitous on behalf of papal authority), have never attributed such sweeping dominion to the pontiff.

Secondly, it is clearly not merely false, but laughable, to suppose, as these men do, that the Donation of Constantine to Pope Sylvester (if there was such a thing), or the later donation of Philip II Augustus of France, brought about not a donation but a restitution; or indeed to turn the thing around and say that, in fact, Sylvester gave Constantine the eastern empire for the sake of peace. 'Similarly,' they say, 'if the pope does not use his temporal administration in the whole Christian world that is not due to some defect in his authority, but in order to foster the bonds of unity and peace amongst the children of Christendom.'

None of this has any foundation in Scripture; we nowhere read of this power being given to the apostles by Christ, nor of them using it, nor anywhere declaring that they had such dominion. Nor has the pope himself ever recognized this power; on the contrary, he testifies to the opposite in many places, some of which have already been cited. The learned Innocent III clearly stated that he had no power in temporal matters over the king of France in the decretal *Per uenerabilem* (X. 4. 17. 13).⁴⁹

§3 Question 5, Article 2: Temporal power does not depend on the pope as other inferior spiritual powers do, such as bishoprics or curacies

This second proposition is proved from the first. The pope himself in some sense gives their power and authority to bishops and inferior powers, as will be discussed below; but he gives no power to kings and princes, because no one can give what he does not have. He has no dominion (*dominium*), as proved above, and therefore cannot give any. Consequently he cannot make temporal kings and princes, I mean not through temporal power. This is proved in the preceding article by the express confession of the popes themselves; and it can also be proved by reasoned argument. Temporal power existed before the giving of the keys to the Church; therefore true princes and temporal lords existed before the advent of Christ, nor did Christ come to take away what

48. The reference is especially to Huguccio's commentary on the canon *Cum ad uerum* cited above (see the Glossary, s.v.).

49. Innocent's decretal (see the Glossary, s.v.) was an extreme statement of papal plenitude of power, but Vitoria is correct in asserting that Innocent restricted the pope's *de facto* temporal jurisdiction to cases involving *ratio peccati*.

belonged to others, since he who gives the kingdom of heaven does not take away the kingdom of this life; nor does the Church need this kind of dominion.

This proposition is not, however, altogether the same as the first. It might be the case that it was the concern of the pope to set up kings, even if he himself had no dominion, just as he gives dominion and title to a prebend and temporal goods of which he is not properly speaking the owner (which, for the moment, we may suppose to be true); or as the emperor may make and institute dukes, even though he is not properly speaking the owner of the dukedom, since he cannot keep it for himself. But I say that the pope is not above kings and princes even in this limited sense that their institution is or could be dependent on the pontiff. I have no more doubt about this than I did about the first conclusion, despite the fact that the supporters of the opposite view commonly assert that the pope instituted all temporal powers as his delegates and subordinates, and that he also instituted Constantine as emperor. All this is improbable make-believe, without a shred of logical proof or authority, either from scripture or from those true theologians, the Fathers.⁵⁰ It is the glossators of [canon] law who, in their poverty of learning and substance, attributed this dominion to the pope.

Furthermore, private ownerships do not depend on the pope; neither, therefore, do public and more universal dominions. The premiss of this argument is well known.

§4 Question 5, Article 3: Civil power is not subject to the temporal power of the pope

I do not mean by this third proposition that it is not subject to the pope, because of course it is certain that all powers are subject to the pope in regard to his spiritual power, they all being sheep and he being the shepherd. I mean that civil power is not subject to him as a temporal master.

This proposition is different from the first and second, because even were we to grant that he is neither master of the world nor empowered to institute kings, he could still be their superior, just as the emperor is superior to some other kings, without being master of their realms or having the right to institute kings in those countries; or as the king of France in recent times was superior to the count of Flanders, and yet was not properly speaking his master or creator of his title. Indeed, a

50. *P ex patribus uere theologis : ex patribus uel uere theologis LS.*

king is above all private persons in his realm, but it is not he who makes them masters of their own property.

And it is in this sense that I say princes and kings are not subject to the pope. This proposition needs no proof, being obvious from the preceding articles. But it may be confirmed as follows. The temporal commonwealth is self-sufficient (*perfecta*), and therefore cannot be subject to anyone outside itself, otherwise it would not be self-sufficient. Therefore it can set up a prince for itself who is in no way subject to another in temporal matters. Likewise, in the age when kings and priests ruled over the people of Israel, we do not read that priests had this kind of dominion (*dominium*). If the scriptures make no mention of this power, where then did it originate? But the strongest of all proofs is this: that it cannot be proved by any means that the pope has this temporal power; therefore he does not have it. If he did, why should a bishop not have the same temporal power in his bishopric? Yet the authors and supporters of the papal plenitude of power never attribute such power to bishops.

§5 FROM THESE PROPOSITIONS it clearly follows that *the pope has no power, at least in the ordinary course of events, to judge the cases of princes, or the titles of jurisdictions or realms, nor may he be appealed to in civil cases.* This is obvious from what has been said, since if he is neither master nor superior there is no reason to appeal to him. And I say that the pope does not have this power not only as far as its use and execution are concerned, but also as concerns its authority. Even those who defend the temporal authority of the pope confess that he does not have the use or ordinary execution of this power; but they claim that this is not due to any lack of authority, but to the fact that he has transferred and mandated the use of his power to rulers. I, on the other hand, say that he has neither the use nor the power, and that therefore it is not his business to judge temporal cases, either in the first instance or at the appeal stage. But I mean 'in ordinary circumstances'; I do not deny that in a particular case it may be possible to have recourse to the pope, and that he may have the power to rescind a civil judgment. But he does this not by reason of any temporal authority, but precisely by reason of his spiritual power, as I shall show in a moment. This conclusion is admitted by Pope Alexander III in his decretal *Causam quae inter uos* (X. 2. 26. 14): 'We, mindful that it belongs to the king and not to the Church to judge of such possessions, lest we seem to detract from the rights of the king of England, who asserts that judgment of these matters belongs to him alone, order you, our Fraternity, that, insofar as you relinquish the judgment of possessions to the king, etc.' And Bernard

says to Eugenius III: 'Your power is in judging sins, not possessions; it is for sins that you received the keys of the kingdom of heaven . . . These miserable trifles of the earth have their own judges, earthly rulers' (*De consideratione* 2. 9–11). So too Innocent III said in his decretal *Nouit* (X. 2. 1. 13): 'We do not intend to judge of fiefs, whose judgment belongs to him (that is, the king).'

§6 A second corollary is that *the pope has no power to depose a secular prince, even for just cause*, in the way that he may depose a bishop. This, once again, is to be understood in terms of temporal authority, since in terms of spiritual power and in particular cases it is otherwise, as I shall show later. This corollary is also clear from what has already been said.

§7 [A third consequence is that *the pope may neither confirm nor rescind civil laws*. This is clear from what has been said, since if civil power does not depend on him, nor do the acts of civil power.]⁵¹

§8 **Question 5, Article 4: The pope has no merely temporal power**

I explain this as follows. Civil and temporal power is that which has a temporal end; spiritual power is that which has a spiritual end. I mean, then, that the pope has no power which is ordered to a temporal end, which is merely temporal power. This is the opinion of Cajetan (*De comparatione auctoritatis papae et concilii* II. 13 ad 8).⁵² It is proved by the argument that, as stated above, spiritual power is distinguished from temporal power by its purpose, because spiritual power aims at a spiritual end; but the supreme pontiff is nothing but the person or priest in whom the supreme power of the Church is vested; therefore he has no power which has a temporal purpose. And a confirmation of this is that even in the absence of any purely temporal power there would still exist a supreme pontiff with the highest power of the Church; hence no temporal power is to be assumed in him. And a second confirmation is that the necessity and reason for things is to be sought in their purpose, but there is no purpose in assuming this power in him; *ergo*. And although some of the defenders of the opposite view are Thomists, I do not believe St Thomas himself was of their opinion: first, because although he was a zealous supporter of the papalist faction he never, as I said before, attributed this sort of power to the pope; second and more significantly, as I shall show below, because according to St Thomas churchmen are exempt from paying tributes by special privilege of their

51. This paragraph is absent in *P*.

52. Rocaberti 1697–9: XIX, 463–4.

secular rulers, whereas if the pope was a temporal lord, as these men declare, and kings had their supreme power from him, there would be no need of the princes' privilege for ecclesiastical exemptions.

§9 Question 5, Article 5: Temporal power does not depend completely on spiritual

That is, in the way that a craft or faculty depends on a superior one, as the craft of making bridles depends on horsemanship, or boat-building on seamanship, or armoury on soldiering.⁵³ I have raised this proposition to answer those doctors who draw this analogy with the two types of power. The proof runs as follows: civil power is not exclusively ordered for spiritual, as a craft is exclusively ordered for its superior, and therefore the analogy is not at all exact. The major premiss is obvious for two reasons. First, if there was no soldiering there would be no armourers, just as there would be no bridlemakers without horsemanship. All crafts of this kind are organic, or instrumental; if the purpose is lacking, the instrument becomes useless, or indeed non-existent. That is not the case, however, with civil power in relation to spiritual power. Even if there existed no spiritual power, nor any supernatural felicity, there would still be some kind of order in the temporal commonwealth, and some kind of power, as there is in natural things, even irrational ones, where some are active and others passive for the good of the whole. Hence there is a great difference. We are not to suppose that the one type of power depends on the other, or exists exclusively because of it, as a sort of instrument or part of it. Thus the power of the praetor is part of royal power, but is nevertheless self-sufficient and perfect in itself, existing immediately for its own purpose.

Nevertheless, temporal power is in some way conformable to spiritual power, as explained above. The confirmation of this is that in the opinion of the best philosophers a brave man would be obliged to lay down his life for the commonwealth even if there were no felicity after this life. Hence the commonwealth would continue to exist even if the

53. The comparison is taken, as Vitoria makes clear at the start of the next article, from the opening of Aristotle's *Nicomachean Ethics* 1094^a9–15: 'Where arts fall under a single capacity – as bridle-making and the other arts concerned with the equipment of horses fall under the art of riding, and this and every military action under strategy, in the same way other arts fall under yet others – in all of this the ends of the master arts are to be preferred to all the subordinate ends; for it is for the sake of the former that the latter are pursued.' Vitoria used the simile again in *On Law* §122 *bis*, in ST I-II. 93. 4).

purpose of spiritual power be taken away. Consequently, some order of the ruler and his subjects would remain, because without it there could be no proper commonwealth.

§10 **Question 5, Article 6: Notwithstanding, civil power is somehow subject, not indeed to the pope's temporal power, but to his spiritual power**

The proof of this proposition is that if the purpose of any faculty depends on the purpose of another faculty, then that faculty depends on the other, as Aristotle says (*Nicomachean Ethics* 1094^a9–15). St Thomas Aquinas draws the analogy with power (*ST* II-II. 40. 2 ad 3). But the purpose of temporal power depends on the purpose of spiritual in some way; therefore also civil power depends on spiritual power. The assumption in the premiss is proved as follows: human happiness is imperfect, and ordered towards the perfection of supernatural felicity, just as the craft of armoury is ordered towards soldiering and generalship, ship-building towards sailing, or the manufacture of ploughshares for agriculture, and so on. So it is not correct to think of civil and spiritual powers as two disparate and distinct commonwealths, like England and France.

This is confirmed and explained by considering that, if some civil policy (*administratio*) were detrimental to the spiritual ministry, the king or ruler would be bound to change such a policy (as I shall shortly prove), even though it were otherwise fitted to the proper ends of civil power. Hence civil power is subject in some way to spiritual power.

It might be objected to this last point, that conversely, if the spiritual ministry were harmful to the commonwealth, the pope would be bound to change it. But the reply is that this is not so, providing that the ministry is necessary or particularly useful. In cases of necessity or great utility, even the loss of temporal goods should be borne for spiritual goods. And it is no good replying that, though this may be true, it is not a matter of the subjection or dependency of civil power, but because the purpose of spiritual power is more perfect than that of civil power and therefore in the normal course of charity a spiritual good ought to be preferred to a temporal good. This, as I say, is no good, because if it were the case that temporal power were in no way subject to or ordered for the spiritual, no obligation to look after the spiritual good to the detriment of the temporal good could arise even from the fact that the spiritual good was greater. The proof is that the governor of one commonwealth is not obliged, indeed ought not, to look after the good of another commonwealth, even a greater good, if it is to the harm of his

own commonwealth. Not even a private individual, indeed, is bound to undergo a loss of his own goods for the benefit of other men's common weal. If, therefore, the civil and spiritual commonwealths were altogether independent, like two temporal commonwealths or like two unconnected crafts, the ruler of the temporal commonwealth would not be obliged to come to the aid of spiritual things if it involved harm to the temporal commonwealth.

Nor is it any good to say that the king is obliged to take care of spiritual things when these solely concern his own subjects, and that it is necessary to take care that his subjects should not suffer a loss of spiritual goods even at the cost of any loss of their temporal goods or government, because otherwise the subjects would be harmed. This, too, is due to the subjection of civil power to spiritual; the argument, as I say, is false because it does not 'solely concern his own subjects'. If, for example, the policy of the civil commonwealth in Spain were to cause a great loss of spiritual goods in Africa, the ruler would still be obliged to correct that line of policy. It is therefore a matter of the dependency and hierarchy [of civil and spiritual powers].

The confirmation of this is that the Church is one body, and the civil and spiritual commonwealths cannot be made into two bodies, but only one. This is certain from the words of the apostle Paul adduced above, that Christ is the head of the whole Church. It would be an unnatural monstrosity for the one body to have no head, or for the head to have two bodies. In a single body, everything is connected and subordinated to one another, the less noble parts existing for the more noble. So too, in the Christian commonwealth, all offices, purposes, and powers are subordinated and interconnected; but it can in no sense be said that spiritual things exist for temporal ones. On the contrary, temporal things exist for spiritual ones, and depend on them. And a final proof is that priests of the New Law clearly have no less rank than those of the Old, who were also able to give verdicts in some cases, as proved above (Deut. 17: 8–10).

§11 Question 5, Article 7: The Church has some temporal power and authority over the whole world

This proposition is clear first from the canon *Omne quod in pacis* (*Decretum* D. 22. 1, §*coeleste*) where Pope Nicholas says that Christ 'conferred simultaneously on the blessed Peter, key-bearer of eternal life, the rights over both the earthly and the heavenly kingdoms'. The *Glossa ordinaria* remarks that this is an argument to prove 'that the pope

holds both swords, the spiritual and the temporal'. The same allegation is made in the canons *Tibi Domino*, *Nos sanctorum praedecessorum*, and *Iuratos* (*Decretum* D. 63. 33, C. 15. 6. 4, and C. 15. 6. 5); and it is also the express determination of St Bernard in *De consideratione ad Eugenium III* 2. 9–11, even though he there grants absolutely nothing to the assent and grace of the pontiff, and indeed reprimands the ambition of the papal see in the strongest terms he can muster.⁵⁴

And the proposition can also be proved by reason. It has always been necessary for the convenient administration of the Church, even for spiritual purposes, that the Church should have some temporal power; therefore such power should be set up. The major premiss will be proved and explained in my eighth proposition, which is as follows:

§12 Question 5, Article 8: In regard to spiritual ends, the pope has plenitude of temporal power over all princes, kings, and emperors

That there exists in the Church some temporal power as regards spiritual ends is proved, as I have just said by the fact that temporal things are in some degree necessary for, and designed for, the fulfilment of spiritual things (*in ordine ad spiritualia*).⁵⁵ Hence Christ would not sufficiently have provided for and guarded spiritual matters, if he had not left some power whose business it was, when necessary, to ordain and use temporal things in the fitting way for the fulfilment of a spiritual purpose. But this power is no concern or duty of secular princes, who know nothing of the proper relationship of temporal and spiritual things, and have no responsibility for spiritual things. Therefore this responsibility for using temporal things for spiritual ends must be part of the Church's power. Hence, if it is ever necessary to use temporal means such as the material sword of temporal authority to guard or administer spiritual things, the pope may do so. So I assert that the pope has the widest power: that is, whenever and to whatever degree it may be necessary for spiritual ends, he has not only all the powers which secular

54. Vitoria's own interpretation of the Two swords (see the Glossary, *s.v.* swords, *Cum ad uerum*, *Omne quod in pacis*, and *Unam sanctam*) was severely literal: compare §. 9 below.

55. The phrase is taken from Cajetan's *De comparatione auctoritatis papae et concilii* (Rocaberti 1697–9: XIX. 462–3). The following argument is a plea for the 'indirect' temporal power of the Church, which Suárez and Bellarmine were later to erect into dogma (Suárez 1613: 330; Bellarmine 1872: I. 531–2, *De summo pontifice* V. 6).

princes have, but also the power to make new princes, to unmake others, to divide empires, and many other such things.⁵⁶

- §13 BUT, for the greater clarification of this point, we might first ask the question: *is this temporal power of the pope's to be understood as being exercised only mediately, through the spiritual power and sword, or immediately, through an act of temporal power?* For example, if it were necessary to the defence of the faith for the Spaniards to declare war on the Saracens, would the pope only be able to compel the king of Spain to declare war by reproaches and admonitions, or would he be able to declare war himself on his own authority, and then summon the Spaniards to war, so that they would be obliged to follow him as a king? Or take a more familiar example: the emperor makes a law that even a possessor 'in bad faith' may acquire prescriptive rights of ownership. Now even supposing that such a law of prescription was not in itself so unjust as to lose the force of law, if not revoked it will become such an occasion for offences and thefts, such a force for evil rather than good, that it will be expedient to repeal the law, or allow it to fall into disuse. The question, then, is this: whether the pope may revoke the law and make a contrary one by his own immediate authority, or whether he is only empowered to advise and compel the emperor to revoke or repeal it?⁵⁷

I REPLY first, that the pope may not revoke such a law immediately, because that is the province of the civil power, which the pope ought not and may not usurp without necessary cause. Otherwise he will commit an offence against rulers by taking over their duties. The proof of this is that if the pope were empowered to exercise any act of civil power solely by virtue of its convenience for a spiritual purpose, then the pope would always be empowered to exercise all civil power, since the whole temporal administration is necessary for spiritual ends; and that would mean an end to all princely duties. For a thing to pertain to the pope's province, it is not sufficient for it to be necessary for spiritual ends; his intervention must also be a case of necessity. That is to say, the limit is

56. For Suárez the principle that the pope was empowered to depose heretical rulers in the interests of the spiritual welfare of their subjects became a dogma, *Tractatus de legibus et legislatore* Deo IV. 19 (Suárez 1856–78: V. 405–7). Compare *On the American Indians* 3. 4.

57. Vitoria's point in this paragraph is clarified in *On the American Indians* 2. 2. It refers to the removal of the condition of *bona fides* from the Roman law of prescription (see the Glossary, s.v. *praescriptio*) and Innocent III's ruling on 'prescription in bad faith' (X. 2. 26. 20).

set not by the extent of the power of the pope's office, but by the limitations of civil power. I conclude, therefore, that the pope must first of all use his spiritual power, by ordering the law to be revoked. But if the secular prince refuses, then the pope may and ought to revoke the law by his own authority, and the law will be revoked.

In the same way, if the people of Christendom were to elect a prince who was an unbeliever, of whom it might justly be feared that he would lead the people from the Faith, this prince, considered solely in the light of divine law, would be a true ruler. Nevertheless, it would be the pope's duty to exhort, or indeed to order, the people to depose such a prince. If the people refused, or was unable to do so, the pope would then be empowered to depose the prince on his own authority; and the prince, who before was a true prince, would lose his sovereignty by the pope's authority.

And so too for all other temporal business, I assert that the pope is not empowered to anticipate the temporal power. However negligent the temporal power may be in the administration of the commonwealth, so long as it does not threaten harm in spiritual matters the pontiff has no power; but if it threatens serious spiritual damage, he may provide a remedy in the manner described above. If princes should war amongst themselves over some territory to the obvious detriment and harm of religion, the pope may not only forbid them to fight, but may also, if there is no other way of bringing them to agreement, make a judgment between them by his own authority, pronouncing one right and the other wrong. The reasoning behind all this is that the spiritual commonwealth ought to be perfect and hence self-sufficient, just as the temporal commonwealth is.⁵⁸ Now a temporal commonwealth has the right, if there is no other way to preserve its safety and well-being, to exercise its own jurisdiction and authority. If the Spaniards, for example, can in no other way defend themselves from injury at the hands of the French, they may occupy their cities, set up new princes and lords over them, punish the innocent, and do other things by their own authority as if they were truly their masters, as all doctors will agree. Similarly, therefore, if the spiritual power cannot preserve itself and its commonwealth in safety and well-being in any other way, it may do everything necessary for this purpose by its own authority. Otherwise its power would be crippled and insufficient for its own purpose.

58. See above, 4. 2 (footnote 41), and compare *On Civil Power* 1. 2, footnote 18.

§14 **Question 5, Article 9: Whether the pope's word on temporal matters is to be heeded more than a king's⁵⁹**

A second doubt arises, if the pope has no temporal power except in cases of necessity, when the pope declares some civil law or act of temporal policy to be unfitting and inexpedient to the administration of the commonwealth: *if the pope then orders this law to be repealed, but the king says the contrary, whose judgment is to be relied upon?*

I REPLY that were the pope to declare such a policy inexpedient to the temporal government of the commonwealth, he should not be heeded. Such judgment belongs not to him but to the prince, and even if his judgment were true it would have nothing of papal authority. So long as a thing is not incompatible with the salvation of souls and religion, the pope's office is not involved. But if the pope declares that a policy works to the detriment of spiritual salvation – for instance, because a particular statute cannot be kept without mortal sin, is against divine law, or foments sin – then the pope's judgment is the one to be relied upon, since the king has no jurisdiction in spiritual matters, as I said before.⁶⁰

And this is to be understood as holding in all cases except those where there is obvious error or fraud. The pope must take adequate notice of the reason for a temporal policy and not immediately decree whatever seems to him at first sight to promote the cause of religion, without considering the temporal circumstances. Neither rulers nor nations are obliged to frame their policy on the best grounds for a Christian life, nor can they be forced to do so; they are only bound to keep within the bounds and limits of the law of Christ.

The confirmation of this is that Christ left two distinct powers in the one Church for the protection and increase of goods both temporal and spiritual; and it may frequently happen that doubts and controversies may arise between these two powers. But it would clearly be an inadequate provision which left the Church with no court where such doubts might be adjudicated; 'every kingdom divided against itself is brought to desolation' (Matt. 12: 25; Luke 11: 17). And it is unreasonable to say that this is the business of secular rulers, who cannot rightly judge of spiritual matters. It is clear, therefore, that judgment

59. The following passage is marked as a separate article by P ('9a. propositio' in *marg.*), but not in *LS*.

60. Vitoria refers to the standard canonist doctrine of the pope's power to intervene in temporal matters *ratione peccati*, 'when a question of sin is involved' (see the Glossary, s.v. *Nouit*).

must rather be the business of the rulers of the Church. Besides this, when anything is necessary for the spiritual life of subjects, however detrimental to policy in the temporal sphere, it must always take precedence over temporal things. If knowledge of spiritual matters is the business of the prelates of the Church, then judgments about the relative importance of temporal things in comparison to spiritual ones must also be their business.

In accordance with the preceding conclusion, Pierre de la Palu appears to grant the supreme pontiff authority in temporal affairs, although he seems to me somewhat over-generous in his description of the extent of this authority (*Tractatus de causa immediata ecclesiasticae potestatis*). Boniface VIII, in the bull *Unam sanctam* (*Extravagantes communes* 1. 8. 1), says: 'And in this power (of the Roman pontiff) the Gospel taught that there are two swords, the spiritual and the temporal, when the apostles said "Lord, behold, here are two swords" (Luke 22: 38); and also (he goes on) that "there is no power but of God, and all powers that be are ordered of God" (Rom. 13: 1). But they would only be "ordered" if one sword were below the other and guided by it, like an inferior towards the higher'. Innocent III states the same conclusion in his decretal *Solitae* (X. 1. 33. 6).

BUT ON THE OTHER HAND arguments can be found against some of the preceding statements which have moved some authorities to uphold opinions contrary to those asserted in some of the preceding propositions:

§15

1. FIRST IT IS ARGUED, especially against the first three propositions, that *Christ our Saviour was lord of the whole world also according to his human person*; the pope is the vicar of Christ; *therefore the pope is simply the true lord of the whole world*, and thus has complete power of every kind over all other rulers and over all temporal power.

The major premiss is clear, because He is 'King of kings, and Lord of lords' (Rev. 19: 16); and He said of Himself, 'All power is given unto me in heaven and in earth' (Matt. 28: 18). And of Him it was prophesied, 'he will be the governor among the nations' (Ps. 22: 28), and 'his kingdom ruleth over all' (Ps. 103: 19), and He 'reigneth over the heathen' (Ps. 47: 8). The minor premiss is proved by the unqualified statement to Peter, 'Feed my sheep' (John 21: 17), which clearly means that Peter had absolute authority without limitation to feed the flock like Christ, namely in spiritual and in temporal matters; and also because the apostles were told, 'as my Father hath sent me, even so I send you' (John 20: 21), which, since He was sent with both types of power, means that the Church also continues to hold both powers; and finally, because

it is clear that He made Himself king, since He was accused of doing so and did not deny it (Matt. 27: 11; Luke 23: 3; John 19).

First, I reply to this argument that it does not immediately follow, because Christ had temporal power or was the lord of all the world, that He left this power to His Church. The doctors confess that Christ had the power of excellence (*potestas excellentiae*), but not that He bequeathed it to His Church.⁶¹ Hence the Church does not have the power to institute new sacraments, nor to unmake those that already exist, neither can it forgive sins without a sacrament, even though Christ had all these powers. And though we may concede that Christ held dominion over all the world, this dominion was expedient in His case because of His personal authority and because He was to renew the world, and also because He Himself could not abuse such power; but it was not expedient for Him to leave to the Church a power which, if abused by the pontiffs, might lead to the ruin of the Church. Since even the doctors who hold the opinion opposed to mine admit the inexpediency of the pope wielding powers of this kind, what need was there of a power so theoretical and abstract (*mathematica*) that the Church would never use it?

§16 Second, I shall say only, since I have treated this topic of the temporal power of Christ at greater length elsewhere (*On Civil Power* 1. 11), that Christ was not king by hereditary succession either.⁶² This is clear from the absence of any mention of such a kingdom in the Gospels, which it is therefore vain to invent; and because it is clear that no woman could ever succeed to the throne, and therefore Christ could not [inherit it from Mary].

§17 Third, nor do I believe that Christ had temporal dominion like that of princes, even by God's gift; His kingdom belonged to a different sort. Both parts of this assertion are proved by the fact that, wherever mention is made of the kingdom of the Messiah in Scripture, it is always shown to be of another kind and purpose than that of any temporal kingdom. This is clear in Ps. 2: 6–7 'Yet has he set me up as king on his holy hill of Zion, I will declare his decree', a passage which Christ Himself condescended to explain in the Gospel: 'My kingdom is not of

61. Christ's *potestas excellentiae* was His human power, while the *potestas auctoritatis* was His divine power. In effect, the 'power of excellence' meant the power to found new sacraments; Aquinas, among others, denied that Christ had passed this on to the Church (ST III, 64. 4).

62. P has a marginal note opposite this sentence: 'Domingo de Soto says the same in his relection *De dominio*, at the beginning.' Soto's *De dominio*, which is usually dated 1534 (Hamilton 1963: 179), is copied in P, fols. 232–41, by the same scribe as the present relection, Fray Andrés de Burgos (Beltrán de Heredia 1928: 104).

this world . . . and for this cause came I into the world, that I should bear witness unto the truth' (John 18: 36–7), which is the same as saying 'to declare his decree'. Indeed, in this passage He seems to exclude any literal interpretation of His kingdom as a temporal one. When Pilate asked Him, 'Art thou the King of the Jews?', the Lord answered: 'Sayest thou this thing of thyself, or did others tell it thee of me?' (John 18: 33–4). These words make the point clearly; Pilate knew nothing of the law or religion, and could not understand any kingdom other than the temporal sort which the princes of this world enjoy; and so, if he said this thing of himself, he can only have meant it of temporal kingship, and the Lord would have had to reply in a different way. But if he said it because of the accusation of the Jews, who accused Christ of pretending to be king, a different answer was required. Hence, when Pilate replied, 'Thine own nation and the chief priests have delivered thee unto me', the Lord saw fit to warn him not to be deceived by the calumnies of the Jews, but to understand that the kingdom to which the Jews falsely supposed that Christ was a pretender was no such kingdom as Pilate could have conceived, but the kingdom of the Messiah, a kingdom 'not of this world'; that is, not of the same sort, nor for the same purpose as other temporal kingdoms are ordered, but for the preaching of truth. It was as if He said, 'Now do not be deceived, Pilate; this kingdom of mine which the Jews accuse me of trying to usurp is not a kingdom like your kingdoms.' That is, He did not deny the accusation, so long as it was properly and truly interpreted. Nor did the Jews ever accuse Him of pretending to any other kingdom than the Messiah's. What they said was this: 'We found this fellow perverting the nation, and forbidding to give tribute to Caesar, saying that he himself is Christ a King' (Luke 23: 2).

It is true, however, that the Jews thought of the kingdom of the Messiah as a temporal kingdom; and this also seems to have been the opinion of those who attribute to Him the rightful hereditary kingship of the Jews. But this too was directly denied by Christ.

§18

Christ's universal kingdom, therefore, existed by no human principle such as paternal inheritance, election, or similar titles; nor was it for any temporal end. Its title was the redemption, as the Apostle said: 'he humbled himself, and became obedient unto death, even the death of the cross; wherefore God also hath highly exalted him, and given him a name which is above every name, that at the name of Jesus every knee should bow, of things in heaven, and things in earth, and things under the earth' (Phil. 2: 8–10). And its purpose, too, was the redemption, which is a spiritual end. And to this end He had full plenitude of power in temporal things also; He could depose all the thrones in the world,

institute new rulers, bring others to heel, reduce others to the rank of private citizen, and do all things necessary to bring about the redemption, for which purpose He came into the world. In the case discussed at the outset of this article, I do not deny this power to the Church.⁶³

This is also the meaning of the passages, 'For God sent not his Son into the world to condemn the world, but that the world through him might be saved' (John 3: 17), and 'Who made me a judge or a divider over you?' (Luke 12: 14).

The point can also be proved by reason, since He did not use this power; and it is vain to postulate a potential which cannot be brought to actuality.

2. BUT AGAIN, our opponents say [that Christ had universal dominion] *because of his great worthiness and perfection*. This, to be sure, is tantamount to claiming that the Lord aspired to be worthy of all the things which Paul regarded as nothing but dung (Phil. 3: 8). But Christ Himself, far from setting an example by claiming such things, expressly taught us to despise not merely the use, but even the property (*proprietaem*) of temporal things.

Likewise, they construct an argument on the basis of the passage 'Behold, here are two swords' (Luke 22: 38). On this see Cajetan's *Tentacula Novi Testamenti* 7. 1; Boniface VIII in the bull *Unam sanctam*; and St Bernard in *De consideratione ad Eugenium III* 4. 3. They interpret this as referring to the temporal and spiritual swords.

§19 3. THIRD, they argue that Pope Zacharias deposed the king of the Franks and raised Pepin III, father of Charlemagne, to the throne, as Gregory VII relates in the canon *Alius* (*Decretum* C. 15. 6. 3).⁶⁴ Similarly, Pope Stephen II transferred the empire from the Greeks to the Germans in the time of Emperor Constantine V, and [Leo III] instituted the first emperor Charlemagne, as Innocent III relates in his decretal *Venerabilem* (X. 1. 6. 34). Likewise, Innocent IV placed an embargo on the royal government of the king of Portugal, as we read in his decretal *Grandi* (*Sext* 1. 8. 2).

63. The sentence 'Indeed, if all Christians should wish to elect pagan princes, the pope could reject their choice and appoint Christian rulers instead' is here interpolated by LS. It seems difficult to reconcile with the following scriptural passages, though Vitoria has already said much the same thing above, in his discussion of papal intervention in temporal affairs *ratione peccati*.

64. Gregory's canon *Alius* (see the Glossary i.v.) is incorrectly attributed in the text of PLS to 'Gelasius'.

All this, it may be retorted, proves no more than I have asserted above: namely that in cases where it is necessary for the avoidance of disturbances in the realm, or the protection of religion against pagans or other such matters, the pope has all these powers.⁶⁵

4. FOURTH, it is argued that it is the business of the ecclesiastical power to pronounce upon all matters of mortal sin; at least, judgment by way of fraternal correction is referred to the Church (Matt. 18: 15–17). But since in every legal action, however secular, the second party commits an offence, the Church will be empowered to judge the case; and hence it will be empowered to pronounce on every controversy, even secular ones, and this is the business of the civil power.

The reply to this is that in many articles and cases at law, the question of whether one of the parties commits an offence is a matter of civil law. Therefore it is not the business of the ecclesiastical power to pronounce upon such cases; they must be decided in the competent court, which is the civil. Once the case has been decided in the civil court, however, if the second party refuses to abide by the court's decision, then and not before, recourse may be had to the Church, on the grounds that sin is involved. Second, the process by which such cases are referred on the preceding grounds to the judgment of the Church is solely for the purpose of fraternal correction, not for the satisfaction of the injured party; the opposite is true of civil courts. Thus the judgment of the ecclesiastical power is not temporal, but spiritual; and the pope neither should nor can use such a judgment to defraud or [impede]⁶⁶ the civil jurisdiction.

As for the 'two swords', it is clear that the literal meaning of the passage lends no support to the present argument. What happened was that Christ revealed that the apostles would meet opposition and that they needed some defence, they misunderstood Him and replied: 'Lord, behold, here are two swords' (Luke 22: 38). On this, see Torquemada, *Summa de ecclesia* II. 113–15.

5. FIFTH, it could be argued that the popes are responsible for distributing the lands of unbelievers, as seems the case of the islands recently discovered by the Spaniards. But the solution to this argument is also clear from what has been said above. Note, however, that Ockham (*Dialogus* VI 8 *ad fin.*) and Gerson (*De uita spirituali* 4) hold

65. LS add the sentence: 'On this matter, see further the decretals *Licet ex suscepto* (X. 2. 2. 10) and *Pastoralis* (Clementine Decretals 2. 11. 2).'

66. LS *impedimentum* : *imperium* P.

the erroneous opinion that the pope is not empowered to punish all sins against the natural law by sentence of excommunication, but only those sins which are directly against the Gospel, such as those which concern the sacraments or the faith. But this is contradicted by Paul in 1 Cor. 5, where he excommunicates those guilty of incest.⁶⁷

Question 6:⁶⁸ Whether clerics are exempt from civil power

On this matter, see Torquemada's *Summa de ecclesia*, and Pope John XXII's condemnation of Marsiglio of Padua.⁶⁹ I shall reply to the question briefly with the following propositions:

- §1 **Question 6, Article 1: Clerics are by law exempt and free from civil power, so that they may not be arraigned before a secular judge in criminal or civil cases**

This proposition was mentioned in my first question (1. 2 ad 3), and is dealt with in various places which I omit here as being too well-known to need me to lecture you further on them. The contrary opinion was among the theses of John Wycliff condemned at the Council of Constance.

- §2 **Question 6, Article 2: Not all clerical exemptions are founded in divine law**

The first proof of this proposition is that such exemption is nowhere mentioned in Scripture; hence it cannot be said to have been sanctioned by divine law.

The initial point can be proved, because the two scriptural testimonies adduced to prove the contrary are not sufficiently explicit about this exemption:

67. *LS* give the reference incorrectly as 2 Cor. 5, and add: 'which is a sin against the law of nature'.

68. *P* 5. questio.

69. *LS* replace this sentence with: 'Following this line of enquiry, we may pose the contrary question, whether clerics are exempt from civil power.' Marsiglio's *Defensor pacis* was printed in 1522, but it appears Vitoria's knowledge of its views was confined to the text of John XXII's condemnation of five propositions (Vitoria answers four of them).

1. The first passage is Matt. 17: 24–7, where they demanded the half-shekel of Christ, and the Lord said to Peter: 'Of whom do the kings of the earth take custom or tribute? of their own children, or of strangers?' And Peter answered, 'Of strangers'; to which Jesus replied:

Then are the children free. Notwithstanding, lest we should offend them, go thou to the sea, and cast an hook, and take up the fish that first cometh up; and when thou hast opened his mouth, thou shalt find a piece of money: that take, and give unto them for me and thee.

From this passage it is argued that, as Christ here showed that some kind of men have their liberty and are not liable to rulers, it seems impossible to conceive what other order of men this could mean than churchmen, such as Christ Himself and His disciples were. Therefore churchmen have their liberties. The assumption in the second term of this syllogism is proved thus: Christ cannot have been referring to the knights and nobles, and all other members of society are subject to taxation, hence we must inevitably take it that He meant the clergy.⁷⁰

On this passage, the reply is given by St Thomas and Bonaventure in their commentaries on Lombard's *Sentences* II *in fin.*: the Lord was speaking of Himself and His disciples, who were neither of servile condition, nor owners of any temporal goods on which they might be bound to pay taxes to their masters. Therefore it follows, say these authorities, that not every Christian shares these liberties, but only those who, by following the apostolic life, are not of servile condition.

Perhaps, therefore, Christ only wished to exempt those who do not have the ability to pay. The clergy, however, do have the ability. St Thomas says as much in his commentary on this passage of Matthew, where he also says that the Lord seems to have been hinting that He Himself was not obliged to pay tribute (*census*) because He is a king: 'for he is Lord of lords, and King of kings' (Rev. 17: 14). There is, however, a difference between a 'custom' (*tributum*) and 'tribute' (*census*): 'custom' is a duty levied on goods, whereas 'tribute' is poll-money, paid by subjects as a sign of submission. Now Christ was not a subject, because he was a king; for this purpose, it was enough that he was king of the kingdom of the Messiah, not king of a secular realm. The Messiah, at least as far as His person was concerned, was exempt from the power of princes. Furthermore, He was also of kingly descent, being a son of David, which was sufficient to exempt Him. If the father

70. The argument is based on the medieval theory of the Three Estates of knighthood, clergy, and labourers ('all other members of society'). In Vitoria's Spain (unlike England) the knighthood was scot-free.

is exempt, so is the son; hence if Christ's ancestors were exempt, so was Christ, even in the law of nations. But one might argue in a different way, and to my mind more truly, that Christ in His divine person is king of the whole world; consequently, since He is by birth the son of God, and natural sons are exempt even in the law of nations, Christ was exempt; His humanity did not deprive Him of His liberties. Perhaps, then, Christ meant that He was the Son of God.

2. The second passage of Scripture which they adduce is Ps. 105: 15 'Touch not mine anointed.' From this some will have it that, since the clergy belong to the Lord Christ, being truly anointed and consecrated to the Lord, it is not lawful to touch them; that is, to judge them. But this passage is of no help to the case of the clergy, since the testimony which it provides makes no explicit mention of the clergy, or does so only by allegory. Therefore it is useless for the purpose of the argument.

The second main argument in favour of this proposition is that clerics are exempt not by divine law, but by privilege from princes. This is St Thomas' express opinion in his commentary on the passage in Rom. 13: 7 'Render therefore to all their dues, tribute to whom tribute is due.' And he comments that this exemption is just, but not necessary. The proof is that in this passage Paul unconditionally teaches us to pay tribute, without any particular mention of the clergy or any other kind of men. This exemption from tribute is therefore not founded in divine law. If the scriptural ruling is made in general terms, it is quite illegitimate and insolent to make an exemption which is nowhere mentioned in Scripture. The Scriptures are quite clear, and I think it altogether certain that the clergy are not exempt from tribute by divine law. The fact that they share the benefits confirms that they should also share the burdens.

§3 Question 6, Article 3: Some clerical liberties from secular power, however, are founded in divine law

The proof of this proposition is that in purely ecclesiastical cases the clergy are not subject to civil power by divine law; therefore some exemptions are founded in divine law. The initial proposition is clear from what has already been said. Ecclesiastical power is distinct from civil power, and does not depend on it; the secular ruler has no jurisdiction in spiritual cases, and therefore, as far as these cases are concerned, the clergy are wholly exempt. The proposition is confirmed by the fact that all the power of secular princes comes from the community and

commonwealth (a supposition I take for granted for the present); but the commonwealth has no spiritual power, as I shall show below, and hence the secular prince cannot have any jurisdiction in spiritual things. A second confirmation is that the apostles exercised and looked after the whole ministry of the Church without appeal to the authority of secular rulers, and so too did all the saints, even after the conversion to Christianity of those rulers. Therefore the Church has complete power in ecclesiastical matters, and is not subject to princes; so Peter struck dead Ananias and Sapphira (Acts 5: 1-11). The contrary opinion was condemned in the proceedings against Marsiglio of Padua. From this it follows that if princes have any place in administration of ecclesiastical affairs such as electing bishops or presenting candidates to ecclesiastical dignities or benefices, they do so by privilege and licence granted by the Church, not by reason of their own rank. This follows as a corollary from what has been said. (On this point, however, note that Cajetan concedes that even in the administration of the Church princes may resist the pope if he is manifestly squandering the substance of the Church; for example, if the pope makes pernicious papal provisions or practises simony in the distribution of benefices, possession should be withheld from the papal candidates, since no obedience is owed in such evil dealings: see Cajetan, *De comparatione auctoritatis papae et concilii* 27).⁷¹

That this exemption of ecclesiastical persons from the secular is founded not only in human law but also divine law is confirmed in the decretal *Quamquam pedagiorum* (Sext 3. 20. 4) and in the canon *Si imperator* (Decretum D. 96. 11), which state that God wished the clergy to be ordained and judged not by public laws and secular powers, but by the pontiffs and priests. And further confirmation of the whole point is provided by the fact that Peter was told 'Feed my sheep' (John 21: 16-17). If the prince had jurisdiction in ecclesiastical cases, he would either have power equal to the popes, and this is impossible because it implies a divisive split in the commonwealth, or power superior to that of the pope, which is also impossible because Peter had his power immediately from Christ. Therefore he can only have power beneath Peter, or from Peter.

This point is again confirmed by the words of Constantine the Great to the bishops who attended the Council of Nicaea, which are recorded by Rufinus in his *Ecclesiastical History* X. When the bishops presented the emperor with a set of dossiers containing their various mutual complaints and cases against one another, he called them together and said: 'God made you priests and gave you power to judge Us; therefore

71. Rocaberti 1697 - 9: XIX. 523.

it is right that We should be judged by you, but you cannot be judged by other men.' Here, then, we have the confession from the emperor's own lips, and one which, it seems more than likely, did not merely express his own opinion, but was the result of consultation with his spiritual advisers and philosophers. And if this is true, it is especially true of spiritual cases. It is therefore beyond doubt that princes have no jurisdiction or administrative powers in spiritual matters, either by divine law or by grant from the commonwealth; and if they have any rights in these matters, they come entirely by grant from the Church.

- §4 **Question 6, Article 4: The persons of the clergy are not altogether or in every respect exempt from civil power, either by divine law or by human law**

This proposition is obvious. The clergy are obliged to obey the civil laws in those matters to do with the government and temporal policy of the civil community (*civitas*) which do not interfere with the ministry of the Church; and if they break the law they commit a sin. Hence they are not altogether exempt. This deduction is self-evident; if they were altogether exempt, they would be no more obliged to keep the civil laws than if they were the laws of another commonwealth. The proof of the initial premiss is that the clergy, besides being ministers of the Church, are inhabitants of a particular civil society; they are thus obliged to live by certain civil laws not passed by the pope, since the pope cannot ordinarily promulgate civil laws, as I have proved above. Hence the clergy are obliged to live by civil laws passed by the emperor or by a lay prince. Furthermore, a king is king not merely of the laity, but also of the clergy, so that the latter must in some sense be his subjects. And I have already shown that the clergy are not administered, as far as temporal matters are concerned, by the power of the Church; therefore they have a ruler whom they are bound to obey in such matters.

- §5 **Question 6, Article 5: Although clerics were not personally exempt by divine or imperial (*Caesareo*) law, the supreme pontiff was empowered to exempt them from civil power**

The proof of this proposition is that it is clearly convenient, and indeed necessary, for the ministry of spiritual affairs that the persons of churchmen should be exempt from the civil courts. As I said above, the commonwealth of the Church is self-sufficient (*perfecta*); it must

therefore have the power to carry the laws convenient to the ministry of the Church. If the exemptions of the clergy are convenient, therefore, the Church is empowered to carry laws on the subject of such exemptions. That this kind of exemption is necessary is obvious, since if the ministers of the Church can be arraigned before a secular court, they may be called away from the ministry of the Church, and will be unable to devote themselves as required to their duties; 'no man that warreth for God entangleth himself with the affairs of this life' (2 Tim. 2: 4). If ministers were to become entangled in secular litigation, they would be unable to war for God.

Likewise, the pope might chose ministers of the Church on his own authority, notwithstanding the objections of the civil power; by the same token he may take them out of the hands of secular courts. Again, if even in ecclesiastical cases a person could be haled before an ecclesiastical court, and indeed could not be indicted otherwise, if he could at the same time be called before a secular court he would occasionally be completely confused and unable to satisfy either court. And it would, in truth, be wholly unbecoming that churchmen, who are also the pastors of those very courts, should be accused in court by their subjects.

- §6 **Question 6, Article 6: The exemption of the clergy, especially as concerns their persons, that is from judgment or punishment by the secular power, is wholly in accord with divine and natural law**

The first proof of this proposition comes from the judgment of Constantine the Great mentioned above, which says: 'but you cannot be judged by other men, because amongst yourselves you await the judgment of God alone, and your offences, whatever they may be, are reserved to divine scrutiny; for you were given to us by God as divines, and it is not fitting that a man should sit in judgment over gods'. The same point is clearly proved by the action of Joseph, who left the land of the priests free (Gen. 47: 22).

Again, the two commonwealths each have their corresponding powers, and they must also have their own ministers who are not subject to the ministers of the other. It would be quite absurd and scandalous if the prosecuting magistrate (*praetor*) were to judge cases in the presence of the bishop, and the bishop in the presence of the magistrate. By this token, the Apostle forbids his congregation to conduct their cases before pagans: 'dare any of you, having a matter against another, go to law before the unjust and not before the saints?' (1 Cor. 6: 1). It would

clearly be scandalous for the preachers of the Faith to go to law before a pagan king.

- §7 **Question 6, Article 7: Whether or not clerical liberties are from divine law, such liberties or exemptions cannot be taken away by a secular ruler**

This seventh proposition is clear from the fifth, since once it becomes expedient to the administration of ecclesiastical affairs, the pope may exempt the ministers of the Church even without the authority of rulers.

It is also proved by the fact that princes' power comes wholly from the commonwealth. But the whole Christian commonwealth has already consented to these liberties of the Church, and therefore princes may not take them away.

- §8 **Question 6, Article 8: Nevertheless, if the liberty of the clergy were clearly damaging to the commonwealth, for instance by letting churchmen run riot murdering the laity with impunity, and if the pope refused to provide a remedy, princes might take measures on behalf of their subjects, despite the privileges of the clergy**

This proposition is obvious, because the civil commonwealth is self-sufficient (*perfecta*), as pointed out above. Hence it may defend itself and protect itself from harm by anyone whatever, and carry the laws necessary to this end on its own authority. The argument is confirmed by the fact that princes may protect their own commonwealths from offence (*iniuria*) by any other commonwealth, not merely by self-defence but also by exercising their authority, as I have demonstrated already; and this includes offences by the clergy.

- §9 **Question 6, Article 9: Prosecuting magistrates, however, and all other magistrates besides the prince commit a grave error and sin if they exercise their jurisdiction against the privileges of the clergy, even when the latter are dangerous, or even by dragging criminals from the sanctuary of the Church, except in those cases permitted in law.**

This proposition is clear, because the latter are not their subjects, and they have no power against them; and while the laws stand, they may not lawfully act in contravention of the laws, nor do they have the power

either to repeal the law or to give dispensation from the law; this power is reserved to princes alone. Amongst the errors of Marsiglio of Padua and John of Jandun condemned in Pope John XXII's *Extravagantes*, the first⁷² was that when Christ paid tribute in the Gospel (Matt. 17: 27), He did so not out of generosity and condescension, but because He was constrained to do so of necessity. The second was that it is the business of the emperor to correct the pope, and to institute him; the third, that if one priest possesses greater authority than another, he does so by grant of the emperor; and the fourth, that neither the pope nor the whole Church can punish any man using coercive means unless the emperor has given them authority to do so.⁷³ Cajetan remarks that although anyone may lawfully kill the pope in self-defence if the pope invades his territory, nevertheless no one may execute the death penalty on the pope as a punishment for homicide. I suppose that he understands this to be the case in divine law; otherwise the statement would be meaningless.

*Here ends the first Relection on the Power of the Church
To the praise and glory of Our Lord Jesus Christ.*

72. *P primus : unus L.S.*

73. The errors of Marsiglio condemned in John XXII's constitution *Licet iuxta doctrinam*, from which Vitoria quotes closely, are printed in Denzinger 1911: 213, §495–500 (these are Errors 1, 3, 4, and 5 respectively).

II ON THE POWER OF THE CHURCH
(De potestate ecclesiastica altera)

The second relection on the power of the Church was delivered in early 1533.¹ P's version is copied by the same hand as I On the Power of the Church (probably that of Fray Andrés de Burgos). Besides being more accurate than the printed texts, Andrés' copy preserves Vitoria's original division into six questions and twenty-seven propositiones.

1. For the date of delivery see the title, which comes from *P*. It is confirmed in another MS witness, *V* (Valencia, Biblioteca del Patriarca MS 1557, fol. 144^v). *LS* omit the date, giving the title merely as 'Second Lecture on the Power of the Church'; but a variant in *V* and *L* (footnote 2 below) mentions that *I On the Power of the Church* was written 'for 1531' (that is, probably delivered in 1532: see *I On the Power of the Church*, footnote 1). This suggests that the present second lecture belonged officially to the following session (1531-2), and was as usual delivered late, in 1533; which in turn explains why the only other MS witness, Vatican Library MS Ottob. 782, fols. 160^v-69, assigns the relection 'anno 1532'.

RELECTION II ON THE POWER OF THE CHURCH
OF THE VERY REVEREND MASTER
FR. FRANCISCO DE VITORIA,
DELIVERED IN SALAMANCA, A.D. 1533

In the other lecture which I gave on this topic last year,² I dealt with part of the subject of ecclesiastical power; namely, by what law and when it was set up, the distinction between civil and ecclesiastical power, and the comparisons between the two. Consequently, on this occasion I shall discuss the subjects in whom this kind of power is vested, and other weightier theological questions concerning power.

**[Question 1, Single article: Whether the power of the Church
belongs to the Church as a whole]**

§1 FIRST OF ALL, therefore, we may put the question *whether the power of the Church per se is vested in the Church as a whole?* That is to say, in the universal Church as distinct from its individual members, by analogy with the way in which civil power is immediately present in the whole commonwealth, as both theologians and philosophers correctly concede. It may seem that it is:

1. By the analogy with secular power, which is vested in the whole commonwealth though it is delegated to the magistracies and other powers within that commonwealth. The order of grace does not cancel out the order of nature, both being from God.³ By this reasoning, it appears that church power is vested in the whole universal Church, which is nothing other than a sort of commonwealth of all Christians. The proof of this is that each of these two kinds of power exists for the good of their respective commonwealths; therefore, since both are set up

2. PS In alia [altera S] relectione quam de hac materia anno preterito [superiori S] fecimus: In alia relectione pro ann. 1531 VL.

3. Compare *On Civil Power* 1. 5 ad 6; *On the Law of War* 1. 1.

for and designed to accomplish the good of the commonwealth they must, in the first instance, be vested in the commonwealth.⁴

2. Confirmation of this point is provided by the fact that in their decrees councils use the words 'representing the universal Church'.⁵

3. A further confirmation is that 'the power of the Church is *immediately* vested in a duly constituted council' (the truth of this proposition, which may be assumed for the moment, I shall test in a short while). But the council cannot arrogate that power to itself except insofar as it represents the person and office of the universal Church; *ergo*.

4. Next, and principally, because the Church elects a supreme pontiff. The cardinals do not elect the pope by their own authority, but by that of the Church; therefore, the Church has supreme power, since it cannot give what it has not got; *ergo*.

5. It is stated in Matthew 18: 'Tell it unto the Church: but if he neglect to hear the Church, let him be unto thee as an heathen man and a publican' (Matt. 18: 17). In this passage power is given to the Church.

6. Prelates are called 'ministers' of the Church; *ergo* their power belongs to the institution.

BUT ON THE OTHER HAND, for the solution of this question we must recall the distinction which I expounded some time ago in my first lecture, to the effect that *the power of the Church can mean two things*: first, it may be taken in a broad sense, to mean any authority or power duly constituted for spiritual purposes and for the performance of holy rites, whether or not this power has any spiritual and supernatural effect. This was the nature of all ecclesiastical power before the keys of the kingdom were given to the Church by our Lord; that is, of all priesthoods which depended on natural and human law. Second, ecclesiastical power may be taken as a specifically spiritual power and authority; that is, the power of opening and closing the kingdom of heaven. This is the only power designated by the Lord 'the keys of the kingdom' (Matt. 16: 19, 18: 18), and only the keys have spiritual effect, as I showed in the previous lecture (*I On the Power of the Church 2*).⁶

4. Vitoria returns to the idea of the Church as commonwealth (*I On the Power of the Church* intro.) to combat the Lutheran heresy of the priesthood of all believers. He first refutes the conciliarism of Gerson and Almain (see Introduction, pp. xxi–xxii).

5. The formula was used to open decrees of the Councils of Constance, Florence, and Basle (see the Glossary, s.v. *concilium generale*). This *obiectum* is placed after the fourth by S; P's text is confirmed by the order of Vitoria's *responsa* ad 2–3 below.

6. On the keys see the Glossary, s.v. *claves*. The two kinds of power here are the 'purely carnal' ecclesiastical power of the natural and old law (*I On the Power of the Church* 3. 3–5), and the 'purely spiritual' power of the evangelical new law.

I REPLY, on the basis of these two definitions, with the following propositions:

- §2 1. Ecclesiastical or spiritual power according to the first definition *may be vested in the whole Church or commonwealth*. This is proved because any just commonwealth is constituted⁷ by God; 'for', as it is written in Romans, 'there is no power but of God' (Rom. 13: 1). This is confirmed by the fact that the ordering of the civil commonwealth is just as much God's work as that of the Church; it is not a product of natural law. If, therefore, God granted that the civil commonwealth should be the fountainhead of all civil power, would he not have given the same sort of privilege to his dearly beloved Church?

According to the corollary of this proposition, the priests of the gentiles could clearly make laws and decrees concerning sacred rites, since they had that authority by virtue of being appointed for spiritual purposes, either by the light of faith, or by the light of natural reason alone without any further authority; hence they were competent to conduct the rituals of divine worship, and indeed were bound to do so by the precepts of natural law, as I have shown elsewhere. The gentiles are condemned 'because that, when they knew God, they glorified him not as God, neither were they thankful' (Rom. 1: 21); but the administration of worship or of all the commandments which concern spiritual ends (as I have proved above), does not concern the civil power but some other sort of power. Therefore this first kind of spiritual power must reside in the commonwealth.

From this there immediately flows a further corollary: in the law of nature, the commonwealth had the power to appoint the priests and other ministers of the sacred rites. This conclusion clearly follows from the premiss, since the commonwealth, if it had this power, could delegate and entrust it to whomever it chose. This is confirmed thus: such power, if it does not belong by natural law to one member of the commonwealth more than another, can only be disposed of by the authority of the whole commonwealth. The evidence of this is provided by the fact that, both in the history of Christendom and in the history of pagans living according to natural law, we nowhere read of priests appointed by any other means than by popular acclaim, as in the case of the Romans, or by the authority of the king in whom the whole power of the commonwealth was vested. If Shem, the first-born son of Noah, was high priest after the order of Melchizedek, as the Jews believe, and this was the prerogative of all first-born sons, I cannot believe this was by

7. *S* quælibet respublica iusta constituta : quælibet respublica instituta *P* quælibet respublica constituta illustrata *L*.

some special precept or command of God; it was by order of Noah himself, who was the ruler of his people by ordination, or otherwise by some ordination or constitution of peoples or nations. As I showed in my first lecture, there was then no power which needed the special authority of God (*I On the Power of the Church* 3. 2–5). And if Abel was a priest, that too was by the appointment of our first parent Adam, whose ordinance remained in force until the time of Noah. Abel is said to have officiated at sacrifices by Augustine, *Ad Orosium* 5, and in Heb. 11: 4.⁸

§3 2. *All spiritual power in the Old Law was exclusively vested from the first in the tribe of Levi, and no member of any other tribe was permitted to serve in the Temple. This is clear from Deuteronomy 10, where after the death of Aaron, who was himself a member of the tribe of Levi, 'Eleazar his son ministered in the priest's office in his stead'; and from that time 'the Lord separated the tribe of Levi, to bear the ark of the covenant of the Lord, to stand before the Lord to minister unto him, and to bless in his name, unto this day; Wherefore Levi hath no part nor inheritance with his brethren; the Lord is his inheritance' (Deut. 10: 6–9). The same thing is written in Joshua: 'Only unto the tribe of Levi he gave none inheritance; the sacrifices of the Lord God of Israel made by fire are their inheritance, as he said unto them' (Josh. 13: 14); and confirmed by Paul in his letter to the Hebrews, where he says 'Levi also, who receiveth tithes, payed tithes in Abraham. For he was yet in the loins of his father, when Melchizedek met him', and continues: 'If therefore perfection were by the Levitical priesthood, what further need was there that another priest should rise after the order of Melchizedek?' (Heb. 7: 9–11). From this it is clear that the whole priesthood of Judaism was vested in the tribe of the Levites. And this is confirmed again by Paul in the same place, where he says 'it is evident that our Lord sprang out of Judah, of which tribe Moses spake nothing concerning priesthood' (Heb. 7: 14). And the same holds for the other tribes, of which Moses likewise said nothing.*

§4 3. *Power by the second definition (that is, truly and properly spiritual power such as the power of the present-day Church, which I call 'ecclesiastical power') neither was in the beginning, nor is in itself or indeed in any other way whatsoever, vested immediately in the whole universal Church, in the way in which civil power is vested in the commonwealth.*⁹

8. This paragraph is placed before the preceding one in S; Muñoz mistranslated *secundum corollarium* ('according to the corollary') as 'the second corollary'.

9. Vitoria here attacks an ambiguity in the corporate notion of the Church (see the Glossary, i.v. *congregatio fidelium*): his denial that the body politic of the Church is equivalent in this respect to a secular commonwealth is aimed at refuting conciliarist notions of representation (see the Introduction, pp. xxii–xxiii).

The proof of this is as follows. This power belongs to the whole Church either by natural law, or by human law, or by divine law; but in fact it does not belong to the Church by any of these laws; therefore it is not vested in the whole Church. The minor premiss is clear because, as I discussed with abundant arguments in the previous lecture, ecclesiastical power goes beyond both human and natural law, both as regards the purpose for which it is ordained, which is supernatural, and as regards its effect, which exceeds all human capability, consisting as it does in the remission of sins, the conferral of grace, and the consecration of the eucharist. Therefore it follows that this power cannot belong to the universal Church by natural or human law. As for divine law, it is clear that this power cannot belong to the Church by divine law because all this power has as its sole author our Lord and Saviour Jesus Christ, who 'is the head of all principality and power' (Col. 2: 10); and 'he gave some, apostles; and some, prophets; and some, evangelists; and some, pastors and teachers, For the perfecting of the saints, for the work of the ministry, for the edifying of the body of Christ' (Eph. 4: 11–12). And in Ephesians it is said: 'But unto every one of you is given grace according to the measure of the gift of Christ' (Eph. 4: 7). He alone has the domination of the kingdom (Rev. 3).¹⁰

Furthermore, Paul in his epistle to the Hebrews 7–9 shows that the priesthood of the New Testament differs from that of Judaism; the priesthood of the Church is according to the order of Melchizedek (Heb. 7: 15–21), whereas the Judaic priesthood was handed down by law, as the Apostle says (Heb. 7: 5, 12, 28, etc.). Christ did not have the priesthood from the institution of the Church, but from God, as it is written in John, 'Ye have not chosen me, but I have chosen you' (John 15: 16), and in Psalm 2 'Yet have I set my king upon my holy hill of Zion, etc.' (Ps. 2: 6). And the Apostle makes this difference quite clear in the passages quoted; 'So also Christ glorified not himself to be made an high priest; but he that said unto him, Thou art my Son, today have I begotten thee; As he saith also in another place, Thou art a priest for ever after the order of Melchizedek' (Heb. 5: 5–6); and clearly again, 'For those priests were made without an oath; but this with an oath by him that said unto him, The Lord swear and will not repent, Thou art a priest for ever after the order of Melchizedek' (Heb. 7: 21), and in Hebrews 1, 'Thy throne, O God, is for ever and ever; therefore God, even thy God, hath anointed thee with the oil of gladness' (Heb. 1: 8–9 = Ps. 45: 6–7). Therefore there can and ought to be no doubt that all ecclesiastical power comes from Christ, and He did not have it from the

10. The citation is incorrect, and Vitoria's reference remains unexplained.

Church, but on the contrary He gave it to others, according to the words of John: 'As my Father hath sent me, even so send I you' (John 20: 21).

But Christ did not give this power immediately or in the first instance to the Church, but to certain individuals and subordinates, as is shown by the words of Matthew about His promise to give the keys to Peter and to build His Church upon him (Matt. 16: 18-19), and His command to Peter to feed his lambs (John 21: 15). And to all the apostles He said: 'Whose soever sins ye remit, they are remitted unto them, etc.' (John 20: 23). Nowhere do we read that he gave these things to the Church in general. Even the power to consecrate the eucharist He gave to the apostles personally at the Last Supper, saying 'Do this in remembrance of me' (Luke 22: 14-20). And Christ Himself said that He chose not the multitude, but only the twelve apostles (John 6: 66-70). Though He gave this power, it was not to the whole Church but only to the apostles; even the seventy-two disciples were excluded.

Furthermore, if ecclesiastical power belonged in the first instance to the Church, it would follow that all the [apostles]¹¹ would have derived their power from the Church, that is from the community and commonwealth of Christians, just as all civil power derives from the community. But this conclusion is patently false. Neither the apostles nor their successors were given their power by other men; they got it from Christ himself, and their successors got it from them in turn. Indeed, no man was ever given this power by the universal Church. Does not Paul bear witness to this at the beginning of his epistle to Galatians, where he calls himself 'an apostle not of men, neither by man, but by Jesus Christ, and God the Father' (Gal. 1: 1)? The other apostles could have said the same thing of themselves.

Furthermore, nowhere in Scripture do we read that priests are appointed by the authority and consensus of the plebs; rather, they are appointed by the pontiffs and prelates. As Paul commanded Timothy and Titus, 'Neglect not the gift that is in thee, which was given thee by prophecy, with the laying on of the hands of the presbytery' (1 Tim. 4: 14); he repeats this in 2 Tim. 1: 6. And again, to Titus: 'For this cause left I thee in Crete, that thou shouldest set in order the things that are wanting, and ordain elders in every city, as I had appointed thee' (Titus 1: 5). And in Hebrews: 'No man taketh this honour unto himself, but he that is called of God, as was Aaron' (Heb. 5: 4). Note that he said 'called of God', not 'called by the plebs', as the impious Luther has it; inasmuch as Aaron was appointed not by the plebs, but by God, as is clear in Exod. 28; Nor in all the annals of recorded history do we ever

11. *apostoli: alie P alii L.S.*

hear of priests appointed over the faithful by the authority or consensus of the plebs. To be sure, pagan priests were elected by popular vote, such as the priests of Ammon; but such a method of consecration was naturally tarred with the same brush as the priesthood it concerned. Paul warns Timothy, 'lay hands suddenly on no man' (1 Tim. 5: 22). This shows that priests were appointed by the bishop, not by the plebs. Therefore ecclesiastical power is not in the first instance nor immediately vested in the whole Church, but in specific persons.

This can be proved by reason as well as by authority. Ecclesiastical power includes the power to consecrate the holy eucharist; but this power is not immediately vested in the community, since the eucharist is not granted except after consecration, and the Church cannot consecrate except through some intermediary. Likewise the power of remitting sins in the court of conscience, and of imposing penance, is not immediately vested in the Church. If it were, then by the same token the power of a bishop would be immediately vested in his bishopric; but nobody would concede this conclusion to be valid. No one concedes that the entire populace of a bishopric immediately possesses the episcopal power, nor that the bishop's power is derived from the populace. Hence the same conclusion must hold true for the Church as a whole. Furthermore, here is another argument: in a domestic community (that is, a family), power and authority to rule are not immediately vested in the family, but in the father and head of the family; a bishop, however, is like a father to his flock, since he is like a husband to his Church; *ergo*.

Cajetan puts forward another argument to the same effect. It is certain, as I have said before, that ecclesiastical power was vested in the first instance in Christ the lord of the whole Church, and it was vested in him as ruler, not as a subordinate or dependent of the Church. But Christ still is the head and ruler of the Church, for He is 'with us always, even unto the end of the world' (Matt. 28: 20) 'to be the Judge of the quick and dead' (Acts 10: 42), who lives and reigns 'for ever and ever' (Rev. 1: 6, 18). Speaking of the kingdom of the Lord, Paul says in his first epistle to the Corinthians (1 Cor. 15: 23-5):

But every man in his own order: Christ, the firstfruits; afterward they that are Christ's at his coming; then cometh the end, when he shall have delivered up the kingdom to God, even the Father; when he shall have put down all rule and all authority and power. For he must reign, till he hath put all enemies under his feet.

Therefore it is Christ's prerogative as ruler to frame ordinances about His representative and vicar; and it is from Christ that the power of His vicar derives, not from mother Church, which in spirituals by her nature

is not the mistress but the handmaiden of Christ, for she was redeemed by Him. And so the conclusion is that, as the ruler of the Church does not derive His authority from the Church, nor does His vicar. Christ is still the head of the Church, since otherwise He would not be a priest 'for eternity' (since He cannot be a priest except in the Church). This is confirmed by the fact that the doctors and saints do not call the Supreme Pontiff 'the Vicar of the Church', but 'the Vicar of Christ'. The successor of Peter is the Vicar of Christ just as Peter himself was Vicar of Christ; the Church calls Peter and the other apostles 'vicars of God', as in the Preface: 'that it should be directed by those governors whom You wished to be vicars of your work'. The *Glossa ordinaria* interprets the words in Matthew, 'Thou art Peter, and upon this rock I will build my church' (Matt. 16: 18), as meaning that Peter was the vicar of Christ.

Cajetan furthermore argues that a clear sign that ecclesiastical power does not reside immediately and in the first instance in the Church is the fact that the Church cannot reserve this power to itself, or commit it to two or three men of its choice. It would be able to do this if it had sovereignty, just as the commonwealth may either keep the administration of civil affairs in its own control, or alternatively may appoint consuls or tribunes, even setting them above the monarch like the Spartan ephors or the Venetian senators whose jurisdiction is higher than that of the Doge. But the Church cannot act in this way, as I shall show below. Furthermore, power cannot be committed to any community in which the majority of members are not fitted to the exercise of that power; but there are many in the Church who are not fitted to the exercise of ecclesiastical power; therefore this power is not immediately vested in the Church. The minor premiss in this syllogism will be proved below, when I speak of women, children, and perhaps of various others. Likewise, when anything is immediately committed to any community, all the members of that community must have equal participation in that power, as is clear in the secular commonwealth with respect to the civil power in absolute terms. But obviously not all members of the Church have equal participation in the management of the keys, as I shall shortly prove; *ergo*. Finally, in the Old Law spiritual power, such as it was, was not committed to the whole plebs, but only to one tribe, the Levites; so much the less, then, can so sublime a power as the evangelical be indiscriminately distributed to the whole plebs.

TO THE FIRST, going back to the beginning of this question, one may therefore reply by denying the validity of the analogy. The difference, and the logic, is clear: civil power, as its name implies, does not extend to any end or effect other than purely natural ones, and hence this power

is given by nature to the whole community, since all natural gifts are in the first instance common to the whole species or community (for instance, all men are mortal). Ecclesiastical power, on the other hand, is supernatural, and given by God for higher ends. The commonwealth is not mistress in respect of this power, but servant (as I have said); and Christ is its king and lord not by gift of the community itself, but by God's gift. This being so, there is no call to consider the problem of individuals' responsibility within the whole community; whereas with regard to natural things the community is superior and the individual is subject or inferior, with regard to the power we are discussing here, everything depends on the will and institution of Christ, who was the first author of ecclesiastical power. Furthermore, the spiritual commonwealth has Christ as its monarch, and the power of the Church is therefore delegated as to a vicar.

But you may still persist in objecting that even with regard to spiritual things the Christian commonwealth is one body according to Paul's explicit statements (Rom. 12: 4–5; 1 Cor. 12: 12–28), and that in a natural body anything which is committed to a part of the body is committed first and more principally to the whole. It is the man, rather than his eye, which sees; the power of hearing belongs to the man rather than the ears, and so on for all the human faculties. And the eye belongs to the man, not to itself. So it must be too with the mystical body (*corpus mysticum*) of the Church: the spiritual power of individual men must belong first and in greater degree to the whole Church. But I reply to this that, as Aristotle points out, the two terms of a comparison or analogy cannot and should not be wholly identical in every respect; otherwise it is no longer a question of analogy, but of identity (*Metaphysics* 1054^b4).

§5 Likewise, St Thomas Aquinas says that although the mystical body has many similarities to the natural body, it is not totally identical (*ST* III. 8. 1 ad 2; III. 8. 3 *in c*). There are a number of differences, not only as regards their natural existence (since all the powers of the natural body must operate simultaneously, whereas the body of the Church consists of all the faithful from Abel the Just right up to the end of time), but much more so as regards spiritual things. A single person can receive grace and a different spiritual form, which cannot be granted immediately to the whole body of the Church. Furthermore, the parts of a natural body are disposed entirely for the good of the whole, whereas the individual members of the Church are for God and for themselves alone; the good of the private man is not even principally, let alone entirely, ordained for the good of the whole community. Neither grace, nor faith, nor hope, nor any other supernatural form is immediately

present in the whole community; no more is spiritual power, which is equally or even more supernatural.

§6

TO THE SECOND, Cajetan concedes (*De comparatione auctoritatis papae et concilii* 6)¹² that immediate ecclesiastical power is vested in the council of the Church by virtue of its all-embracing representativeness (*ratione totius*).¹³ Thus absolutions, condemnations, and all decrees are enacted in the name of the council; and so in the first council of the apostles they used the form of words, 'It seemed good unto us, being assembled with one accord' and 'It seemed good to the Holy Ghost' (Acts 15: 25, 28). There is, as it were, a single power in the whole synod, so that even if some members of the council dissent nevertheless the decisions are recorded in the name of the whole council, and we speak of the whole council doing things. But the council does not have this power on the grounds that its members 'represent the whole Church'. The proof of this is that in temporal matters the commonwealth may administer itself according to its own free will, and therefore there is nothing against it having civil power; but in spiritual matters it must be governed not by its own will, but by Christ's. In sum, its civil power is nothing more than a licence to act lawfully, whereas its spiritual and ecclesiastical power means its efficacy of action in spiritual matters. Therefore I repeat, those who meet together in a council do not have their power on the grounds that they 'represent the whole universal Church', as some erroneously believe, nor by an immediate commission made by Christ to the whole Church or to the council, but merely because the council is a meeting and congregation of church authorities. Therefore the whole council has no greater power than the individual powers of the Fathers who compose it and their agents. Hence this power is not immediately vested in the council by divine law, but is conferred upon it by the will of the prelates who wish to combine their authorities, as it were, in one single body. Indeed, not only in a universal synod, but also in a provincial council or a council of the Eastern Church, it would be true that so long as all its members were present at the celebration of the council, such a complete congregation would possess a single authority precisely by virtue of its inclusiveness (*ratione totalitatis*). A sign of this is that although all bishops are equal, none being superior to any other, nevertheless all are subject to the decrees of any particular council, and none may rescind from any of its decrees.

12. Rocaberti 1697–9: XIX. 447–8.

13. With the words *ratione totius* 'on behalf of the whole', Vitoria alludes to the important notion of representation (see the Glossary, s.v. *concilium generale*); his argument attempts to deny the corporate notion of the council, and to insist instead on a purely institutional view of its authority.

Yet clearly not even our adversaries can suppose that bishops have their power from the whole plebs of their provinces, or that any ecclesiastical power is immediately vested in a whole province.¹⁴ If that was the case, such power would also be present in the whole of a single parish – an idea too absurd to enunciate, let alone credit. Thus a universal council has the same relation to the universal Church as a provincial council has to a province. To imagine anything else is pure fantasy. Therefore power is immediately vested in the whole council solely by the will of the prelates who institute it, as an expression of a unified power and authority to which they subject themselves as parts of the whole. Their wish to set up a council implies their willingness to be bound by its decrees.

TO THE THIRD, the first reply is that this claim is found only in the most recent councils such as Basle and Constance, but never in the ancient ones. I should not be surprised if some error had not crept into the form of words. Second, I repeat the point made above, that the members of the council represent the Church not as her vicars or legates, but as her fathers, pastors, and teachers.¹⁵ It follows (contrary to the opinion, or rather the fumes and fantasies, of some scholastics) that if all the bishops of Christendom happened by chance to meet in one spot, without any intention of holding a council, there would be no ecclesiastical power 'immediately' vested in all that throng. It is not the place or the physical meeting which gives the members of a council their power, but their collective will. There was no power vested in them collectively while they were all in their individual provinces; neither, therefore, is any such power vested in them when they are gathered together in one place or in a single church. Otherwise it could be argued that if all the bishops of a kingdom happened to converge on the court to visit the king, that would *ipso facto* constitute a council of the Church.

But you may object that this conclusion implies, contrary to the decision of John of Paris, that the council's authority is not superior to the pope's; clearly, if the council has no power other than that derived from the individual Fathers, it follows that it cannot have greater power than

14. In reality, at least one important theorist, John of Paris, used a not dissimilar argument: bishops derive their authority not from the papal see, but immediately from God and the Christian congregation (*a Deo immediate et a populo eligente uel consentiente*, Tierney 1955: 170).

15. The point addressed by Vitoria in this *responsum* is an elaboration of the conciliar theory attributed to Nicholas of Cues, namely the *immediacy* of the council's representation. Against the argument that only the pope has authority to convoke a council, conciliarists argued that a council can rightfully convoke itself *immediately*, by its own right in divine law to represent the body of the Church. In this view, the essential need was that the council should assemble; the means by which it was brought into existence were of secondary importance (Tierney 1955: 225).

the pontiff. In reply, I must first of all make it clear that I do not intend to enter the fray in the hotly-contested dispute between papal and conciliar power. In the second place, nothing that I have said contradicts the learned doctors' decision on that dispute. Whatever may be the source of the council's power, even if it derives from the individual prelates, it is still possible to argue that the whole council has greater power than the pope, just as a provincial council may have greater power than any single prelate who sits upon it. If this answer fails to satisfy, one might argue that the power of the council derives immediately from God, not because the council is a lieutenant of the universal Church, but simply because it is a meeting of all the prelates of the Church, whether or not all other Christians dissent from it. Even if one holds this opinion, it does not affect the outcome of the dispute about papal and conciliar power one way or the other.

TO THE FOURTH AND PRINCIPAL, I shall reply shortly, when I come to discuss the question of whose business it is to elect the supreme pontiff. But for the moment I deny, in the first place, that the cardinals elect the pontiff in the name of the universal Church (they do so by ecclesiastical or papal dispensation, as I shall show later); and second, even granting that the election of the pope is the business of the universal Church, I assert that it is invalid to deduce that ecclesiastical power or authority is thereby immediately vested in the Church. If we examine the minor premiss of this argument, it is a well-known point of law that electors need not themselves have the authority of the post to which they make the election. This is clear, for example, in the case of the election of the emperor, or indeed in the election of abbots; the electors do not by any means have the authority or rank of abbots, but merely the authority and power to confer that rank on the candidate.

TO THE FIFTH, the answer is given by Lord Cajetan in *De comparatione auctoritatis papae et concilii* 2,¹⁶ on whose evidence we may enquire what meaning is to be attached to the word 'church' in the passage 'Tell it unto the church, etc.' (Matt. 18: 17). Since the sentence refers to the Church in its capacity of hearing and judging cases, we must interpret the word as referring either to the universal Church (that is, the whole body of the faithful), or to some particular church, or indifferently to any church. I assert, first, that it cannot refer only to the universal Church, since it is clear that I do not need to apply to a universal council in order to discipline a brother. Furthermore, since the Lord said the same words to St Peter as to the Church, namely 'Whatsoever thou shalt bind on earth shall be bound in heaven, etc. (Matt. 16: 18–19), it cannot be

16. Rocaberti 1697–9; XIX. 447–8.

denied that Peter also has that power which they say was given to the Church. Therefore, in the passage under discussion 'church' cannot refer only to the universal Church. But on the other hand, it is perfectly obvious that it cannot refer to any particular church, for example the church of Milan, because we do not need to apply to the Milanese church for permission to discipline a brother, nor indeed about any [correction]¹⁷ concerning the Church's admonition. Therefore the only remaining solution is that this passage refers to 'the Church' in a general or undefined sense; it means that the judgment of our brothers is the business of the Church, without defining which particular church. And since the prosecutor is bound by the same legal code as the accused, the case must be brought before the church to which the wayward brother himself belongs, either his own or the common and higher church. This is the clear meaning of this teaching.

Nevertheless, there remains a further doubt as to what sense is to be attached to the word 'church' in this passage. I should say briefly that it may be interpreted as 'the convocation or congregation of the faithful'. But my opponents assert that in this passage 'church' means not the community of the faithful *per se*, but as represented by their prelates, whether or not the pope is among their number.¹⁸ However, this cannot be the literal sense, since the passage must always bear the same meaning in regard to any individual sinner; and yet it is certain that if action is taken to discipline a sinner belonging to the Milanese church, we may call this the business of the Milanese church meaning 'the community of Milan, whether or not the bishop is of their number'. Therefore I assert that, although in the purely linguistic sense the word 'church' may be interpreted simply as 'the community of the faithful', nevertheless the sense of the context, in the passages which follow ('but if he neglect to hear the Church' and 'whatsoever thou shalt bind on earth, etc.'), makes it obvious that we are to take the expression as meaning 'the Church insofar as it has authority'. And since this authority cannot exist without the participation of the prelate, it is obvious that 'church' cannot here be taken to mean 'any congregation

17. *correctione* : *collectione* PLS.

18. Arguments on the jurisdiction of the prelacy revolved about the canon *Scire debes* (C.7. 1. 3), Cyprian's statement 'You should know the bishop is in the church and the church in the bishop'. As Johannes Teutonicus commented, 'here the bishop is called the church, elsewhere *ecclesia* means the clergy, . . . elsewhere the "better part" (*maior pars*), . . . occasionally the *congregatio fidelium*; it depends on the context' (*Glossa ordinaria* ad loc., Tierney 1955: 42 n.). *Scire debes* was most frequently used to support the contention that the jurisdictions of the Church reside solely in its head (e.g. Innocent IV, *Apparatus* in X. 1. 3. 21; Tierney 1955: 125 n.).

excluding the prelate'; the prelate must be included by definition. And there is a further proof of this: if the word 'church' does not include the prelate of that church, then we must say one of two things. Either a particular church has rights of jurisdiction even against the will of its bishop; or the word 'church' does not refer to that community. Now it is certain that the church referred to in the passage 'Tell it unto the church' has the power to pronounce excommunication; and it is therefore certain that the prelate, who is the head of the church, is included. That is to say, the word 'church' is used in such a way that 'the judgment of the church' means 'the judgment of the bishop', and 'excommunicated by the church' means 'excommunicated by the bishop'. But the Lord said 'Tell it unto the church', not 'unto the bishop', because we are to understand that such things are to be told to the bishop not as a private matter, but as a matter for the public forum; as the official phrase runs, 'in the public forum and court of the Church'. This is common knowledge; the accepted meaning of this precept as practised in the Church is that the sin of a brother should be told to the prelate, and when it is so told we understand it to have been told 'to the Church'. And when the Lord said, 'Verily I say unto you, Whatsoever ye shall bind on earth, etc.' (Matt. 18: 18), he used the plural, by which he meant either that although the judgment of the Church should be given on the authority of a single prelate, nevertheless it should not be given except by many; or simply that there were to be many bishops and churches in the future.

I say further, still following Cajetan, that in the passage cited from Matt 18 no power appears to be given. The words 'Tell it unto the church' do not give power, but simply enjoin us to denounce the sinner, while the words 'but if he neglect to hear the church let him be unto thee as an heathen man and a publican' simply enjoin us to shun him. Nor, clearly, do the words 'whatsoever ye shall bind' give power; Christ used the same words to Peter, 'Whatsoever thou shalt bind, etc.' (Matt. 16: 19), and he was given no power; later, in John, it is written 'Feed my lambs' (John 21: 15), but this only signifies the efficacy of future decisions of the Church, which Christ does not there give to the Church, but only promises or supposes.

Finally, for the truth of all these passages it is not necessary for a church to have immediate authority from Christ. It is enough that it have authority from its prelate, or from a council of prelates, or from the pope himself. In all these cases the Church would be empowered to demand obedience. Therefore it is quite vain for our adversaries to dream up this 'immediate and immanent power' of theirs.

From all this it is clear that the passage in Matthew 18 cannot be used to make deductions about some authority immediately vested by divine law in the universal Church, or in the council, though the second assertion might, in the sense explained above, be an arguable thesis. I have dealt with this question at some length, because my opponents really have no other scriptural basis for their assertion that there is some kind of authority immediately vested by divine law in the universal Church and council. Cajetan further adds the point that the institution of the eucharist actually took place subsequently, on the occasion of the Last Supper; therefore, at the time of the Lord's sermon in Matt 18 there was as yet no such thing as episcopal or sacerdotal power. Consequently, he cannot not at that time have meant to give power to the council, which after all is made up of bishops and priests.

TO THE SIXTH we need no lengthy reply. First, it is the other prelates, not the pope, who are usually called the ministers of the Church; but they certainly are not called ministers of the Church because they have taken on the authority of the universal Church, but because they are appointed by the ruler of the Church. So it is clear that even if the universal Church had no authority, they could still be called 'ministers of the Church'.

Besides, they ought rather to say of all the prelates, including the pope, that they are 'ministers of Christ', not of the Church. As it is written in Paul's epistles, 'to whom I forgave it, for your sakes forgave I it in the person of Christ' (2 Cor. 2: 10), and 'Let a man so account of us, as of the ministers of Christ' (1 Cor. 4: 1). All spiritual and ecclesiastical power is a gift from God, and purely supernatural. And just as other gifts such as grace, charity, faith, and prophecy are given in the first instance not to the Church but to individual persons (thus the Church has faith, for example, because certain individuals believe), so too ecclesiastical power is given in the first instance to certain persons, and through them belongs to the Church.

IT IS THEREFORE wholly sophistic and tendentious to imagine ecclesiastical power vested in the community, which would never use it, when all is in fact managed, and always has been managed, by the prelates in apostolic succession. In the same way, if the civil commonwealth naturally possessed rulers and all the magistrates necessary for government, it would be altogether idle and preposterous to suppose that civil power were somehow immediately vested in the commonwealth.

**Question 2, Single article: Whether the power of the Church
belongs to [all] Christians¹⁹**

Before I come to the solid and germane truth, I must exclude some false and mistaken opinions. The easiest way will be to propose a further question: *whether ecclesiastical power is vested in all Christians, or in individual Christians*. In the solution of this question all Catholic authors are sufficiently agreed; nevertheless, the modernists (*neoterici*)²⁰ have taken it upon themselves in their arrogance to contradict the Church's universally accepted opinion, contentiously asserting that all Christians are rightfully priests, and that there exist no ecclesiastical orders in the Church. However, they do not strive officiously to prove their point with arguments or texts. As is their way, they simply pluck some passage or other from Scripture, twist it to their purpose, and then, with the bit of heresy firmly between their teeth, go forth to spread dissent and faction:

1. So it will be quite sufficient to set out the words of the most impudent of all, Luther, who says in *De abroganda missa privata* 9: 'All of us who are Christians are priests by the same priesthood as Christ; that is, we are sons of Christ the High Priest. There is no scriptural testimony whatever in the New Testament that any men should be distinguished from lay folk as priests by being tonsured and anointed.' A little further on he adds: 'The irrefutable conclusion is that there are no priests distinguishable by their appearance from laymen in the New Testament; those who thus distinguish themselves do so without scriptural authority and without God's bidding, and what is this but the Devil's work?'

2. Elsewhere he says that 'even a boy, or a woman, or any Christian whatever can give absolution of sins', and adduces the words of Peter: 'But ye are a chosen generation, a royal priesthood, an holy nation, a peculiar people' (1 Pet. 2: 9), and in the same passage: 'Ye also, as lively stones, build up a spiritual house, an holy priesthood' (1 Pet. 2: 5). For it is clear that Peter is here speaking generally to all the faithful, not

19. *S An potestas ecclesiastica sit in omnibus Christianis : An potestas ecclesiastica sit Christianis LP.*

20. The word *neotericus* was coined by Cicero as a term of sarcasm to mean 'avant-garde'. In the Renaissance it was used especially to mock the schoolmen of the *via moderna* or 'modern school' of Dunces (followers of Duns Scotus): Erasmus said that pagan Cicero inspired him with a zeal he never experienced when reading the subtle frigidities of 'our own modernist Christian philosophers' (*nostrates quosdam neotericos*). Vitoria uses the word specifically of nominalists such as Gabriel Biel in his 1539 lectures *In ST I. 1. 1 ad 6* (Beltrán de Heredia 1928: 53).

just to those ordained as priests. So too St John says in Revelation 'Thou hast made us unto our God kings and priests' (Rev. 5: 10) and 'they shall be priests of God and of Christ' (Rev. 20: 6). Luther claims all these things were said of all Christians. And that passage in Matt. 18: 18 which speaks of 'whatsoever ye shall loose on earth, etc.' he affirms was said in a very general sense, to all Christians.

- §1 BUT ON THE OTHER HAND against all such heretics I adduce the proposition that *not all Christians are priests in the way that those ordained by the Church are priests*; that is, with the power to consecrate the eucharist and give absolution of sins. Or to put it another way: not all Christians are priests, nor are they all equal, but there is an hierarchy in the Church, and there are ranks of ecclesiastical power.

I REPLY to this whole question, and to the entire dispute, with as few words as I can – since I have no disagreement with Catholics, but only with heretics, I see no point in wasting the time of so pious and Christian an audience as yourselves on this argument a moment longer than need be. Besides, distinguished writers such as John Fisher and Josse Clichthove, whom I know to be familiar to you, have written eloquently against Luther on this head. Therefore I shall prove the whole proposition in one swoop.

First, Paul says in Rom. 12: 4–6 that the whole Church is a sort of mystical body, composed of various organs and limbs: 'for as we have many members in one body, and all members have not the same office, so we, being many, are one body in Christ, and every one members one of another, having then gifts differing according to the grace that is given to us'. And in 1 Cor. 12: 12, he says: 'for as the body is one, and hath many members, and all the members of that one body, being many, are one body, so also is Christ'; and continues a little below (14–20):

for the body is not one member, but many. If the foot shall say 'Because I am not the hand, I am not of the body,' is it therefore not of the body? If the whole body were an eye, where were the hearing? If the whole were hearing, where were the smelling? But now hath God set the members every one of them in the body, as it hath pleased him. And if they were all one member, where were the body? But now are they many members, yet but one body.

And at the beginning of the chapter: 'Now there are diversities of gifts, but the same Spirit, and there are differences of administrations, but the same Lord, and there are diversities of operations, but it is the same God' (4–6).

TO THE FIRST, then, I appeal and call upon all pious Christians who have ears to hear: what does it mean for Paul to say that God made these various members – hands, feet, eyes, ears – in the body of the Church, if all in the Church are equal? If Luther thinks we are all eyes, where are the feet? Or how will it be true, as Paul adds in the same chapter, that ‘the eye cannot say unto the hand, I have no need of thee; nor again the head to the feet, I have no need of you’ (1 Cor. 12: 21)? Surely, if we listen to Luther, the feet will be able to say to the head, ‘we have no need of you’. For this is the meaning of his teaching; the feet (that is, the plebs) have no need of the head (that is, the priest), because every man-jack of them is a priest!²¹

TO THE SECOND, in the same passage Paul says: ‘And God hath set some in the church, first apostles, secondarily prophets, thirdly teachers’ (1 Cor. 12: 28), and so on through a list of the ranks of the Church. It would seem altogether as if the Apostle deliberately sets out to crush the arrogance of those who wanted to make all in the Church equal, just as, on the other side, he wished to contain the overbearing pride of a few of the upper echelon who despised their inferiors, and to exhort the plebeians not to feel any the less part of Christ’s body because they were not numbered amongst the dignitaries of the Church. In the same sense, he wrote: ‘And he gave some apostles, and some prophets, and some evangelists, and some pastors and teachers, for the perfecting of the saints, for the work of the ministry, for the edifying of the body of Christ’ (Eph. 4: 11–12). And John says: ‘And I John saw the holy city, new Jerusalem, coming down from God out of heaven, prepared as a bride adorned for her husband’ (Rev. 21: 2); but how can the Church be a city, if it has no magistrates or governors nor any hierarchy of citizens, but equality – or rather, a confused mob of men each acting at the beck of his own whim and pleasure? As Cicero says, any multitude of men gathered together anyhow in the same place does not make a civil community (*ciuitas*). Again, Paul says ‘lay hands suddenly on no man’ (1 Tim. 5: 22), a certain warning against too easy sacerdotal ordinations; and ‘Neglect not the gift that is in thee, which was given thee by prophecy, with the laying on of the hands of the presbytery’ (1 Tim. 4: 14); and ‘that thou stir up the gift of God, which is in thee by the putting on of my hands’ (2 Tim. 1: 6). Furthermore, he exhorts Titus to ‘ordain elders in every city’ (Titus 1: 5). In the Acts of the Apostles we read that Paul and his colleagues ordained elders in various churches (Acts 14 23); and when Paul called the elders of Asia to Miletus, he told to them that ‘the Holy Ghost made them overseers to feed the church of God’ (Acts

21. Compare *I On the Power of the Church* 1, 2, and footnote 17 *ad loc.*

20: 28). Certainly, Paul himself openly distinguished the plebs from the priests: 'for we are the helpers of God, ye are God's husbandry' (1 Cor. 3: 9).

But I can see you beginning to fidget at this long rehearsal of needless arguments about a matter beyond dispute. I shall abandon the topic, leaving my opening conclusion as axiomatic: *not all Christians are equal in ecclesiastical power.*

Question 3: [Whether there are some Christians to whom ecclesiastical power cannot be suited]²²

Tertullian, whose authority (at least on account of its antiquity) is weighty indeed, not only deplores these modern heretics' idea of the priesthood of all Christians, but also the uncertain nature of their ordinations: 'Their style of ordinations is frivolous, irreverent, and temporary. Today one is a bishop, tomorrow another; today's deacon is tomorrow's theologian, today's priest tomorrow's layman, since it is their practice to entrust the duties of priesthood to laymen' (*De praescriptione haereticorum*). But this leads us to a serious doubt arising from the preceding question: *whether there are some Christians to whom ecclesiastical power cannot be suited?*

§2 Question 3, Article 1: [Whether women can be ordained]

In the first place it may be asked *whether women are capable of priestly ordination and power.*

1. It seems that they can, since Paul said 'there is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus' (Gal. 3: 28). Therefore it seems that in the law of Christ women should not be rejected from the Christian ministry in ecclesiastical orders.

2. Again, prophecy appears to have as much dignity as ecclesiastical power; but the gift of prophecy is occasionally vouchsafed to women, as shown by the case of Deborah [Judg. 4] and [Huldah] (2 Kgs. 22: 14).²³

²². P 3a. questio in the margin a few lines down.

²³. Huldah's name, omitted in all witnesses, can be restored from Vitoria's source for this discussion of female ordination, Aquinas' ST Suppl. 39. 1 (the examples are conflated from *objecta* 1 and 2 of that article).

§3 BUT ON THE OTHER HAND I adduce the proposition that *women can neither be priests nor hold any ecclesiastical orders or power which exists by divine law.*

IN REPLY, I find this conclusion supported by all authorities with complete unanimity. Although the contrary position is perhaps not so absurd as to be indefensible, I shall nevertheless avoid the *jurisconsults'* habit of opening up new questions, and simply prove the conclusion by citing the opinions of the doctors. First, as I have discussed at length, all ecclesiastical orders and powers are ordained for the governance and direction of the populace to spiritual ends; and these things cannot be suited to a woman. Thus it is stated: 'Let your women keep silence in the churches, for it is not permitted unto them to speak, but they are commanded to be under obedience; and if they will learn any thing, let them ask their husbands at home, for it is a shame for women to speak in the church' (1 Cor. 14: 34-5). And in case it be thought that this is simply Paul's precept, and not divine law, he added: 'If any man think himself to be a prophet, or spiritual, let him acknowledge that the things I write unto you are the commandments of the Lord' (37). And in the first Epistle to Timothy: 'Let the woman learn in silence with all subjection; but I suffer not a woman to teach, nor to usurp authority over the man, but to be in silence' (1 Tim. 2: 11-12). So, too, was the decision of the Council of Carthage in the canon *Mulieres* (*Decretum* D.32. 19), and Ambrose is of the same opinion in the canon *Mulierem constat* (C.33. 5. 17). Aristotle also says that when the rulership and administration devolve to the hands of a woman it leads to the downfall of the commonwealth (*Politics* 1269^b13-1270^a14). We do not read of Our Lord delegating any power to a woman, even to his most holy and most wise Mother; this is clear in the Last Supper and after the resurrection. He does not enjoin women to lord over men; on the contrary, he enjoins them to be subject to them, as in Genesis: 'thy desire shall be to thy husband, and he shall rule over thee' (Gen. 3: 16).

But what convinces me most is the fact that in all the long process of the years, and with all the abundance of good, wise women, the Church has never tried to raise any woman to ecclesiastical power or office. For me it is always a powerful argument in this and similar cases, when a thing has never been done despite abundant opportunity and occasion for doing it, to assume that it has not been done because it was not lawful or possible. Therefore I assume that in this case too it is *not lawful to consecrate a woman in any kind of divine order*; and if anyone acts otherwise, their actions are altogether null.

Question 3, Article 2: [Whether abbesses have any ecclesiastical power]

But even if the preceding conclusion is true, one may still ask *whether the women who are set over other virgins in nunneries have some ecclesiastical power*, if not sacramental at least jurisdictional, such as abbesses claim when they carry laws and deliver precepts in the same customary form as bishops?

- §4 As far as I can see this discussion, too, is uncontroversial as far as the theologians are concerned, though it is for the jurisconsults to consider their own verdict. I propose the following conclusion, based on the opinion of St Thomas (*In Sentences* IV. 19. 1. 1 §3 ad 4 and 25. 2. 1 §1 ad 2) and the better theologians (Pierre de la Palu, *Tractatus de causa immediata ecclesiasticae potestatis* 4. 19. 2–3; Durandus of St-Pourçain, *De origine iurisdictionis*; Silvestro Mazzolini da Priero, *Summa Sylvestrina*, s.v. *abbatissa* §3): *that abbesses and other mothers of nunneries and virgins have no spiritual power or spiritual jurisdiction.*

I REPLY with the following proof: since all spiritual power has its origins in the keys, but a woman cannot hold the keys because they belong to the priesthood, she cannot have spiritual jurisdiction. Although some men who are not priests and do not hold the keys may have spiritual jurisdiction, no one who is not eligible both for the priesthood and for the keys has spiritual jurisdiction. This is confirmed by the fact that novices who are not in minor orders (*professi non clerici*) are in this respect of no lower condition than female religious; but all the doctors agree that spiritual jurisdiction cannot be delegated to a religious not in minor orders, and therefore even less so to any woman. Furthermore, a woman cannot 'loose', and therefore she cannot 'bind', for the latter is certainly the province of the same power as the former. Again, anyone who has jurisdiction outside the court of conscience must be able to excommunicate, just as any judge exercises coercive powers; a woman can do neither; *ergo*. Likewise, a woman possesses no knowledge of spiritual matters, nor is it her province to do so, therefore she cannot make judgments on spiritual things; it would be very dangerous to entrust the spiritual salvation of souls to a person who was unable to discriminate between what is good and what is harmful to the salvation of souls.

It follows that an abbess cannot make any order in the form of a precept (that is, in virtue of the Holy Spirit and commanding holy obedience *sub praecepto*); nor, if she does, will her action have the

binding force of a precept delivered by a bishop, abbot, or prior. It would be absurd to delegate to abbesses the power to adjudge what censure is merited by a particular thing or to decide the different sorts of obligation, for these are matters which require great erudition. Nor, indeed, would abbesses be competent to pass judgment on whether someone had transgressed against such a precept.

§5 **Question 3, Article 3: Whether nuns are bound to obey their abbess**

Someone may ask at this point, are nuns bound to obey their abbess?

I REPLY that they are bound to do so, first because they are bound to keep their monastic rule, which includes obedience to the abbess, second because they are bound to obey her precepts as daughters or sons are bound to obey their father; those who disobey their father's precepts commit a sin even though the father has no spiritual jurisdiction. Nuns are, however, bound to obey their abbess only as they are bound by the other statutes of their rule; there is no spiritual injunction in this. That is, to refuse absolutely to obey the abbess is a mortal sin, but the abbess cannot make new precepts. All this refers to positive, not divine law; although a woman cannot have any spiritual orders, dignity, or jurisdiction by divine law, she may nevertheless have some power of spiritual jurisdiction, as laymen can unless prohibited by laws. But the laws do not in this event grant the abbess any more than they do to laymen.

§6 **Question 3, Article 4: No Christians, other than women, are excluded from holding ecclesiastical power**

The last conclusion on this matter is that *no other Christians besides women are excluded by divine law from holding ecclesiastical power*, either sacramental or jurisdictional.

ON THIS HEAD I say, with the doctors, that all male Christians universally, even boys or madmen, may become priests. The doctors point out that the difference is that such persons may possibly come to a state where they are able to exercise power properly; their impediment is therefore merely contingent, unlike that of women.

The doctors nevertheless make an exception of boys, saying that by divine law they may not be consecrated bishop, and that the consecration of any boy bishop is not binding. It must be said they are on less firm ground here: if we concede that a boy may be consecrated priest, I

do not see any convincing reason why he cannot be consecrated bishop. But this doubt may be left in the air, since I can think of nothing conclusive to say on the matter.

Question 4: [The power of the Twelve Apostles]

Up to now I have been talking about those in whom ecclesiastical power is not or cannot be vested. It remains to speak of those in whom it is vested.

§7 To take the whole matter back to its origin, let our first proposition be that *all ecclesiastical power, both sacramental and jurisdictional, was vested in the apostle Peter*. This conclusion is clear from the gospel: 'I will give unto thee the keys of the kingdom of heaven' and 'upon this rock I will build my church' (Matt. 16: 19, 18), and 'Feed my sheep' (John 21: 17).

Our second proposition is that *ecclesiastical power both sacramental and jurisdictional was vested in all the apostles*. This too is clear, since it was said to all of them together: 'Do this in remembrance of me' (Luke 22: 19); and 'whose soever sins ye remit, [they are remitted unto them]' (John 20: 23); and 'whatsoever ye shall loose [on earth shall be loosed in heaven]' (Matt. 18: 18).

Question 4, Article 1: [Whether the other apostles had power directly from Christ, or through Peter]

§8 But on this second proposition there arises a first doubt: *whether all the apostles had their power immediately from Christ, or whether Peter alone had his power from Christ, and the others had it from him?*²⁴

1. Though sacramental power (*potestas ordinis*) may seem the less doubtful of the two kinds, the answer is not altogether certain. For example, James was ordained bishop of Jerusalem by Peter, James, and John after the ascension of Our Lord, as stated in the canon *Porro et Ierosolimitarum* (*Decretum* D.66. 2). Paul and Barnabas were ordained by others [than Christ himself], according to the Acts of the Apostles where it says: 'Separate me Barnabas and Saul for the work whereunto I have called them', and then adds 'and when they had laid their hands on

24. The underlying purpose of this article is to define the powers of Peter (papacy) v. the powers of the apostles (episcopacy); see the Glossary, s.v. *Dominus loquitur*.

them, they sent them away' (Acts 13: 2-3), on which the *Glossa* remarks: 'in the manner of those who have been ordained'. Yet it is not to be doubted that the apostle Paul received as much power from Christ as the original apostles. So it is not certain that all the apostles held complete sacramental power from Christ, even though the doctors are sufficiently agreed that they held this power.

2. As for jurisdictional power (*potestas iurisdictionis*), a good many important writers contend that only Peter held this power from Christ, the other apostles holding it in turn from Peter. This they prove, first of all, with authorities quoted from such great men as Anacletus, Cyprian, Augustine, Leo I, and Alexander III. But I refrain from citing the words of these witnesses because they do not in fact mean what the authors of this opinion claim (anyone who wishes to see the quotations will find them in Cardinal Torquemada, *Summa de ecclesia* 2. 54). The intention of these saints' testimonies was simply to assert that all authority subsequent to Peter's derived from and depended upon Peter, and that Peter himself was the prince, first of the other apostles, and then of the whole of Christ's Church. Far from wishing to deny this, I should regard the contrary view as an intolerable error.

But, having failed to carry their point with authorities, these opponents try to tie it up with logical arguments. Their first reasoning is that the apostles had no subjects directly from Christ; but jurisdiction cannot exist except over subjects, therefore neither did they have jurisdiction. The proof of the major premiss is that these subjects must either have been all men, or certain men; it cannot be the latter, since we should then have to say yes to some and no to others purely on whim, since the Gospel does not explain which; nor can it be the former, since if He had given all as subjects there would be too many shepherds with the same plenitude of power in the Church, a thing which would be harmful to any government: as Aristotle says, 'a multiplicity of rulers is a bad thing' (*Metaphysics* 1076^a3), and 'every kingdom divided against itself is brought to desolation' (Matt. 12: 25; Mark 3: 24; Luke 11: 17). Another argument is that if there were many equal shepherds, there would not be one fold and one shepherd of the flock of Christ. And finally, it is not apparent how Peter could have been the prince and head of the other apostles if they too had received power like his from Christ.

§9 BUT ON THE OTHER HAND, since the Gospel seems to contradict this conclusion, I state this proposition: *that all the power which the apostles had, they received directly from Christ*. The proofs are as follows. First, it was to all the apostles that He made the statements 'whatsoever ye shall loose' (Matt. 18: 18), and 'do this in remembrance of me' (Luke 22: 19);

and 'whose soever sins ye remit' (John 20: 23); and 'go ye into all the world, and preach the gospel to every creature' (Mark 16: 15), and 'as my Father hath sent me, even so send I you' (John 20: 21). Secondly, it is clear from the Scriptures that Christ personally made them all apostles (Matt. 10: 1-8, Mark 3: 13-19, Luke 6: 12-16; and 1 Cor. 12: 28-9, Eph. 4: 11); but the office of the apostolate involves sacramental and jurisdictional power; *ergo*, the apostles had both types of power from Christ.

I REPLY that there are three things pertaining to the office and rank of the apostolate which must be considered: first authority to govern the faithful, second licence to teach, and third the power of working miracles. All these are set out, first in Luke where it is written that 'he called his twelve apostles together, and gave them power and authority over all devils, and to cure diseases, And he sent them to preach the kingdom of God, and to heal the sick' (Luke 9: 1-2), and also at the end of Matthew's Gospel (28: 19-20), where the Lord said to them: 'Go ye therefore, and teach all nations, baptizing them [and] teaching them to observe all things whatsoever I have commanded you.' On the passage in the first epistle to the Corinthians where it says He set apostles in the Church (1 Cor. 12: 28) the Glossa explains: 'as ordainers and judges of all'. Therefore, if Christ made them apostles, and apostles cannot be without sacramental and jurisdictional powers, then they must have received both from Christ.

Second, the other apostles clearly received no less power from Christ than Paul; but Paul had all the power he held from Christ. As he said himself, he held his power 'not of men, neither by man' (Gal. 1: 1); and he eloquently said that he had received nothing from the other apostles, and specifically from Peter: 'they who seemed to be somewhat added nothing to me; for He that wrought effectually in Peter to the apostleship of the circumcision, the same was mighty in me toward the Gentiles' (Gal. 2: 6, 8). So it seems we must pronounce and hold as certain that *all the apostles received both kinds of power directly from Christ*.

Question 4, Article 2: [Whether the apostles received power equivalent to Peter's]

- §10 But there remains a further doubt: *whether they received power equivalent to Peter's?* This question too has supporters on both sides. But since I am in a hurry to reach more important matters and there is no time to set out the arguments for both sides, I shall merely state the

following conclusion in support of the opinion which I think to be the more correct: *all the apostles had power equivalent to Peter's*. By that I mean that each of the apostles had ecclesiastical power throughout all the world, and to perform all the acts for which Peter was empowered. I do not, however, include those acts which pertain only to the supreme pontiff, such as the power to call a general council.

The proof of the first part is the passage already cited from the end of Matthew's Gospel: 'Go ye therefore into all the world' without exception (Matt. 28: 19), and 'whatsoever ye shall loose on earth' (Matt. 18: 18), and 'whose soever sins ye remit' (John 20: 23). And it is written in John's Gospel: 'as my Father hath sent me, [even so send I you]' (John 20: 21); but Christ was sent into the whole world; therefore He sent his apostles into the whole world.

As for the second part, the power to perform all acts, this is clearly proved by the fact that (as I have said, 4. 1 *in corp*) the authority to govern belongs by reason to the apostolate; but it does not appear to be limited, since it could in no way be said to extend to certain acts and not others. But this point is best proved by the acts of the apostles themselves, who wherever they founded churches made bishops and laws on their own authority. Nor does it appear that there was anything which Peter could do which the other apostles could not also do, save only those matters which belong to the supreme pontiff alone. Paul argues at length that he had the same power as Peter (Gal. 1 and 2). This is obviously the opinion of Cyprian in his letter to Novatianus *De catholicae ecclesiae unitate*: 'I tell you this, the other apostles were like Peter, endowed with the same equal share (*pari consortio*) of honour and power' (*Decretum* C.24. 1. 18).²⁵ We must not pay any attention to the *Glossa*, which says this passage is to be understood as referring to 'the order and dignity of consecration, not the plenitude of power';²⁶ anyone who reads the letter of St Cyprian can see this is wrong.

Question 4, Article 3: [Peter was the supreme prince of the Church]

- §11 However, lest anyone suspect me of trying to derogate in any way the rank, prerogative, or primacy of Peter – which, with the Catholic Church, I not only confess but defend with all my strength – I propose a

25. Peter's 'priority' is discussed in *I On the Power of the Church* 4. 7; the question here is the decretists' distinction between sacramental and jurisdictional power.

26. Johannes Teutonicus wrote: 'I believe it to be true that they were equal in order and dignity of consecration, but not so in the plenitude of administration, which is another matter' (Tierney 1955: 34n). See the Glossary, s.v. *Dominus loquitur*.

further conclusion: *that Peter was the first and prince of all the apostles in authority and power, with supreme power over the whole Church.*

On this conclusion the most learned men have written and published books not merely exact, but voluminous. Here I shall therefore express myself briefly, content with just a few testimonies from the Gospels. The first passage is Matthew's: 'Now the names of the twelve apostles are these; the first, Simon who is called Peter' (Matt. 10: 2). Then there is Luke: 'And the Lord called unto him his disciples, and of them he chose twelve, whom also he named apostles; Simon (whom he also named Peter), and Andrew his brother,' etc. (Luke 6: 13-14). And they are named and listed in the same order in Mark (3: 14-19). Now the only reason that Peter could have been called first was by virtue of the rank of his apostleship or pontificate, since the first in order of vocation was Andrew, Peter's brother, as is made clear in John 1: 40; indeed, according to the words of that passage, which says 'he first findeth his own brother Simon, and saith unto him, We have found the Messias, and he brought him to Jesus' (John 1: 41-2), Andrew must also have already been called by Christ.

Furthermore, any understanding not altogether obstinate and stubborn must recognize the clear and convincing testimony of Matthew 16. When the other disciples muttered and prevaricated²⁷ in answer to the Lord's question, but Peter answered: 'Thou art the Christ, the Son of the living God'. And the Lord said to him: 'Blessed art thou, Simon Bar-Jona; for flesh and blood hath not revealed it unto thee, but my Father which is in heaven. And I say also unto thee, That thou art Peter, and upon that rock I will build my church, and I will give unto thee the keys of the kingdom of heaven' (Matt. 16: 13-19).²⁸ Surely even a blind man can see that in this shining declaration Peter was promised something more than the other apostles. And again, He said [to Peter]: 'I shall pray for thee, that thy faith fail not; and when thou art converted, strengthen thy brethren' (Luke 22: 32). Nor is there any obscurity in that passage at the end of John's Gospel, where the Lord asked Peter twice whether he loved him more than the other apostles, and he replied 'Yea Lord, thou knowest that I love thee'; and the Lord replied twice, 'Feed my lambs, feed my sheep' (John 21: 15-16). It is utterly perverse, and a sign of a man altogether determined to twist the most obvious testimony, to deny that in this passage Christ wished to hand over

27. *L. cunctantibus: circumstantibus P.*

28. This most famous of Petrine texts was the cornerstone of papalist claims to the supreme headship of the Roman see, glossed by the decretists in the many contexts where it appears in Gratian's *Decretum*, and usually, as here, in conjunction with the question of the indefectibility of the Church (Tierney 1955: 25-46).

greater authority to Peter in reward for his greater love. From these two passages alone it is beyond dispute that entire authority in the Church was assigned to Peter. To whom was it given, after all, if not to Peter?

It follows that, although the other apostles had power equivalent to Peter's in the sense explained in the previous article, nevertheless Peter's power was higher; first, because Peter's power was ordinary, whereas the other apostle's power was extraordinary; second, because Peter's power was to abide in the future Church, while theirs was not; third, because their power was neither over Peter nor over each other, whereas Peter's was over all others; and fourth, because the power of the others was subordinate to Peter's authority. Peter's authority would have prevailed against the authority of the others.

Question 4, Article 4: [No one other than the apostles received ecclesiastical power from Christ]

§12 But to resolve at last that passage 'Feed my lambs' (John 21: 15), since it remains more difficult than the others, let me make this final proposition on the question: *that no one besides the holy apostles seems to have received any ecclesiastical power directly from Christ.*

The proof of this is that in those passages where power was given, no disciples other than the apostles were present.²⁹ And the proof of this is that if anyone else had received such power, he would doubtless have been one of the seventy-two disciples; but they clearly did not receive it, therefore it is unlikely that anyone received it. That the seventy-two did not receive power is clear from the case of Joseph, surnamed Barsabas, who was one of them, as stated in Acts 1: 23. Now in Acts 4: 36, after the Ascension of the Lord, this Barnabas is called a Levite; but it is not credible that Christ, if he had given him any ecclesiastical power, should have made him a mere Levite, when the works of God are perfect. And Philip, who preached to the Samaritans and baptized the Ethiopian eunuch of Queen Candace (Acts 8: 5–8, 26–39), was not Philip the apostle, as many think, since there must have been a reason why the Samaritans baptized by him failed to receive the Holy Spirit (Acts 8: 15–16). The explanation, expounded by St Thomas (In *Sentences* IV. 2. 2 §4 ad 1; *Quodlibet* 10. 7 – though he seems to say the opposite in his commentary on John 12, *lectio* 3), is that this Philip was one of the seven

29. L omits the words 'other than the apostles'; in the resultant confusion, S (followed by subsequent editions) tries to make sense of the text by placing the entire sentence after the following one. There are further consequential tamperings with the text in the following sentence.

deacons mentioned in Acts 6: 3–6 and 21: 8. It seems beyond doubt that this Philip was one of the seventy-two, since we will scarcely find anyone, after the apostles, more outstanding than he as a preacher or minister of the Gospel, these being the very works for which the seventy-two disciples were chosen; and yet he was a deacon only, not a priest. Indeed, these seven deacons who were chosen to serve tables (Acts 6: 2–3) are believed to have been of the number of the disciples, since they would not have been raised from the neophytes to such service, and yet it is quite certain that they were not priests; or rather, they had no spiritual power of any kind. Therefore the seventy-two disciples were not ordained by Christ, nor did they have any ecclesiastical power, since the latter cannot exist without orders.

We are left, therefore, with the true conclusion: *that no one besides the apostles received any ecclesiastical power directly from Christ*. And so we have here grasped the original source of ecclesiastical power: the twelve apostles were the first and only men to receive this power from the hands of Christ our Lord and our Redeemer.

Question 5: [The apostolic succession of Church power]

It only remains now to discuss how this power has been handed down to us, and exists to this day in the Church. Then this whole business which I have undertaken on the subject of ecclesiastical power will be complete.

Question 5, Article 1: [Ecclesiastical power was vested in others besides the apostles]

§13 On this question, then, let us make a first proposition: *that ecclesiastical power was not only vested in the apostles, but also in other men*.

This is known from Scripture, because Paul made bishops of Titus and Timothy (as is clear from 1 Tim. 4: 14, 2 Tim. 1: 6, Titus 1: 5–9, and also [1 Thess. 3: 2]³⁰). Again, he gave precepts and forms for instructing and making priests in 1 Tim. 3, Titus 1, and in Acts 20 he addresses the priests of Asia. John mentions the ‘bishop of Laodicea’ in Rev. 3: 14. Therefore some others besides the apostles had ecclesiastical power.

30. 1 Thess.: cphes PLS. The rectification is uncertain; see also Phil. 2: 19–20.

Question 5, Article 2: On the death of Christ's apostles, their power was vested in the Church; all the sacramental and jurisdictional power which had previously been vested in the apostles was perpetuated in the Church

- §14 The proof of this proposition is that the hierarchies (*gradus*) of ecclesiastical power were founded by Christ not only for the apostles' time, but for all time, as long as the Church shall endure. Therefore they must have been perpetuated in the Church after the death of the apostles.

The major premiss is clear from Eph. 4: 11 – 13:

And he gave some apostles, and some prophets, and some evangelists, and some pastors and teachers, for the perfecting of the saints, for the work of the ministry, for the edifying of the body of Christ, till we all come in the unity of the faith and of the knowledge of the Son of God unto a perfect man, unto the measure of the stature of the fulness of Christ.

- §15 From this passage it is clear that the hierarchies of the Church are to be perpetuated in the Church until the Last Judgment and the resurrection of the dead. And Paul says: 'the priesthood being changed, there is made of necessity a change also of the law' (Heb. 7: 12); by the same token, the priesthood being lost, the law would necessarily be lost too. Hence, if there were no priesthood instituted by Christ in the Church, neither would there be any law of Christ. But the law of Christ is eternal, because His covenant is eternal, as Paul says in his epistle to the Hebrews (13: 20). And [the Lord said]: 'I will make an everlasting covenant with them' (Baruch 2: 35); Baruch calls this law of Christ 'the law that endureth for ever' (4: 1). Therefore the priesthood instituted by Christ must necessarily endure for ever, because all spiritual power is understood to be embraced in the priesthood. Again, Christ would not be 'a priest for ever', as he is called by Paul and the prophet David (Heb. 5: 6; Ps. 110: 4), if his priesthood were supposed to expire and come to an end; but Christ's priesthood exists only in the Church. Again, it is commanded in the Church that the eucharist be taken, according to John's Gospel: 'except ye eat the flesh of the Son of man, and drink his blood, ye have no life in you' (John 6: 53). But without the priesthood there could be no consecration of the eucharist; *ergo*. And finally, it is established that the apostles left behind bishops and priests, as it is written of Paul on several occasions; yet their power did not expire on the death of the apostles; therefore power – that is, ecclesiastical power – existed in the Church even after the apostles had died.

Question 5, Article 3: All sacramental power is derived from and depends directly upon the bishops

- §16 By this third proposition I mean that just as the apostles, and they alone, had the power by divine law to ordain and consecrate priests and other lower ministers, so too all bishops, and they alone, have this power by divine law.

That bishops have this power is clear from 1 Tim. 5: 22: 'Lay hands suddenly on no man', which all the saints explain as a reference to the ordination of priests. In chapter 3, Paul instructs Timothy what sort of men he is to choose as priests, saying: 'a bishop then must be blameless, the husband of one wife' and so on (1 Tim. 3: 2–7), which is clearly to be understood of a priest, because he immediately goes on to describe the proper qualities of deacons (1 Tim. 3: 8–12). And again, in the Epistle to Titus: 'For this cause left I thee in Crete, that thou shouldest ordain elders in every city; if any be blameless', and so on (Titus 1: 5–9). Nor is there any controversy amongst Catholics that bishops have this power.

As for the point that bishops alone have this power, this is evident, since we never read of ordinations being performed except by apostles or other bishops. So we read of Paul and Barnabas that after they had instituted priests in the churches at Lystra, Iconium, and Antioch, they departed (Acts 14: 21–3). Dionysius the Pseudo-Areopagite, the disciple and contemporary of the apostles,³¹ in his eloquent and copious discussion on the form of the apostolic Church *On Ecclesiastical Hierarchy* assigns the ordination of ministers to the pontiffs alone; indeed, he maintains that even the holy oil used to consecrate priests cannot be prepared by anyone except a pontiff. Again, sacramental power (*potes-tas ordinis*) is the province of divine law; therefore it cannot be usurped by anyone other than those to whom it has been properly assigned by divine law; these are only bishops, *ergo*. Besides, the universal custom of the Church has always held fast to this belief, that only bishops may perform ordinations; and, as I have said before, the argument that, if a thing has never been done, this is because it was either unlawful or impossible, is a very weighty one.

Therefore it is impious and heretical to say or believe, as the new heretics think, that a man can be instituted priest by election of the plebs, or by any other means than episcopal consecration. It is true that if someone were to hold, as those who dispute this proposition do, that a

31. *L* Dionysius apostolorum discipulus et synchronus [synchronus *S*] : dicit apostolorum discipulus et sinchonijs *P*.

bishop differs from a priest only in his jurisdictional power (*potestas iurisdictionis*), he would necessarily be bound as a consequence to concede that any priest whatever has the power to consecrate priests, since jurisdictional power does not confer the power to ordain (*potestas consecrandi*). But since, as I shall show in its proper place, I believe this opinion to be false, I stand by the conclusion as stated, *that all bishops, and only they, may rightfully perform ordinations*. Nor shall I here dispute whether certain abbots have the power to confer certain orders, major or minor, by special privilege from the supreme pontiffs. If certain orders are not the province of divine law, as is undoubtedly the case with minor orders, it is beyond question that they may be conferred by someone who is not a bishop. But if all major orders are the province of divine law (which I do not for the moment believe), then it is certainly clear that they can only be conferred by bishops, who alone have this power by divine law. I confess that there is a difference in this respect between priesthood and deaconhood; but on the whole it seems more probable that even deacons cannot be ordained except by bishops, if indeed this order of clergy is the province of divine law.

Question 5, Article 4: On the death of Peter, the prince of the apostles, someone succeeded Peter with like authority and jurisdictional power over the whole world

- §17 This is proved by St Thomas (*Summa contra Gentiles* 76). Christ instituted the Church to last until the end of the world, since according to Isaiah He shall sit 'upon the throne of David, and upon his kingdom, to order it and to establish it with judgement and with justice, from henceforth even for ever' (Isa. 9: 7). But Christ built his Church on Peter, as He Himself says (Matt. 16: 18), and therefore it was necessary, when Peter was taken from this life, that another should be substituted in his place. Again, in the Old Testament established by God there was always a single high priest, according to Deut 17 and other passages. This is the meaning of Augustine's statement in the canon *Quodcumque* (*Decretum* C.24. 1. 6) that Peter received the keys not as a private individual, but in the name of the Church (*in nomine ecclesiae*); that is, that the power given to him was to be perpetuated in that same Church for whose building Christ gave him the power.³² So just as Adam had some gifts of a

32. Augustine's text on Peter's unique role in ensuring the indefectibility of the Church was frequently associated by decretists with the canon of Cyprian discussed in 4. 2 §10 above (*Dominus loquitur*, C.24. 1. 18); see the Glossary, s.v. *Quodcumque*.

personal kind such as plenitude of all knowledge which he could not pass on to his posterity, and others common to the state of innocence such as justice, grace, and immortality, so too Peter had certain private gifts in which he neither could nor needed to have any successor, such as the grace of miracles and the gift of tongues, and received certain other gifts which he was to pass on to posterity, such as the power of the keys, which he received not for himself but for the Church.

Besides, the manner in which Christ ordered the Church from the beginning, with one head and one prince over everything in the whole Church, was of course the most convenient for the administration of the Church. So much is obvious, not only from this act of Christ, who is the fountainhead of wisdom and providence, but also from the consensus of all the best philosophers, who put monarchy above all other types of government, as emerges from Aristotle's *Politics*, *Nicomachean Ethics*, and *Metaphysics*.³³ But Christ has no less love for His Church now than He did then, when He promised her that He would 'be with us alway, even unto the end of the world' (Matt. 28: 20). Therefore it is wholly unlikely that after Peter's death He should have wished to change the method and form of administration instituted by Peter himself; that is to say, with one sovereign holding all ecclesiastical power. And Peter had received princely sovereignty not for his own benefit, but for the utility and building of the Church.

In fact, the error of those who deny the continued rule of the Church by a single sovereign to whom all Christians are bound to be subjects has turned out to be no less pernicious than the error of those would have it that all Christians are equal. The error first seduced the greater part of the Christian world into schism, then ruptured it from the Church, and at last tumbled it into the utterly ungodly and perverse creed of Mohammed.³⁴ And yet, once our opponents concede the sovereignty of St Peter, they can find no possible argument to shore up their denial of the continued existence of a supreme monarch in the Church today. In favour of this opinion we have the combined and evident testimony of Ignatius, Cyril, Chrysostom, and other Greek doctors, and indeed of various councils held in Greece. As for Latin authors and councils, of course, it is beyond contention that all have agreed in coming to the same opinion.

33. Compare *On Civil Power* 1. 8, 2. 1; *I On the Power of the Church* 1. 2. Vitoria here combines his arguments about the visible hierarchy of the Church and the 'natural perfection' of monarchy as the highest form of commonwealth (see the Introduction, pp. xxi–xxii).

34. Vitoria refers to the eastern Orthodox Church; Constantinople had been conquered by the Turks eighty years before the delivery of his relection.

Question 5, Article 5: [The Church has the power to appoint Peter's surrogate]

If, as is most certainly the fact, there always exists in the Church at any one time a single successor to Peter, with equal dignity and authority to his, it still remains to enquire how and by what means Peter's dignity and power comes to be carried forward and passed on to another man. For this supreme power assuredly cannot simply fall into the hands of a particular individual at Peter's death.

§18 Let us therefore make the fifth proposition under this question, in due order: *that since the death of Peter the Church has had the power to subrogate and institute someone in his place, even if Peter made no prior choice in the matter.*

The proof is as follows: even if the Church can neither of itself establish spiritual power (as declared in *I On the Power of the Church* 3), nor formally, so to speak, possess such a power within itself (as I explained above in the first question), nevertheless, once such a power was established by Christ, it does not seem right that the Church should be any less in a position to elect a ruler for itself than a civil commonwealth. The latter, if it loses its ruler by any chance, may set up another for itself in his place. Furthermore, this power was needful for the perpetuation of the Church, as I have said. But if Peter had died, as might have happened, without making his own choice of successor or some other provision for setting one up, there would have been no alternative means of doing so other than by election by the Church. So the Church had the power to elect someone; and the confirmation of this is that even now, if war or pestilence or any other calamity were to swallow up all the cardinals, the Church would beyond question be empowered to choose for itself a supreme pontiff. Otherwise the see of Peter, which must endure in perpetuity, would be perpetually empty. The power [of the pontiff] is universal, and affects the whole Church; therefore [he] ought to be chosen by the whole Church, not by some particular Church or order or kind of men. If the cardinals were to neglect their duty, or were unable to make up their minds because of pernicious wrangling, the Church would have the power to choose for itself.

Question 5, Article 6: Whether papal election is by all Christians

§19 But should this be by all Christians?

In reply, let us make a sixth proposition: *that the election of the supreme pontiff in such a case would be the concern of the clergy alone*, in no way of the populace as a whole. The proof of this is that the administration of spiritual things in no way concerns the laity, as I have shown elsewhere. But the institution³⁵ of the supreme pontiff is of the greatest concern for the governance and administration of spiritual things; it can in no way concern the laity. The populace cannot judge the merits and qualities needed for the rank of pontiff, nor examine and decide between a worthy and unworthy candidate; therefore his election or institution does not concern the plebs. It would be absurd for the choice of the priesthood to be assigned to people who were unable, except by pure chance, to make the right choice. Again, the election of priests and bishops does not concern the plebs, as proved at length above; therefore much less so the election of the supreme pontiff.³⁶ Finally, such an election would be entirely impractical, since it would be impossible for the whole populace to convene for the election; nor, once they had convened, could the result be a majority for a single candidate.

§20 Question 5, Article 7: It seems that this election does not even concern the whole clergy

Although the administration of spiritual matters concerns all of the clergy, nevertheless not all matters concern all of them. Apart from bishops, all clergymen have certain limited ministries, beyond which their duties do not extend. Thus deacons minister to priests, and priests administer the sacraments, and matters of authority are no part of their duties. By this token, it can scarcely be fitting that the clergy of the whole world should have a hand in this election.

§21 Question 5, Article 8: Consequently, in any case where the apostolic see is vacant, and confining ourselves solely to divine law, the election concerns all the bishops of Christendom

The proof of this eighth proposition is that the bishops are the pastors and keepers and guardians of the flock, and therefore, apart from the supreme pontiff, they control the whole administration of the Church; it follows *per se* that they are empowered to do the sum of all those things

35. *LS* institutio : ministratio *P*. The error is repeated by *P* in the following sentence.

36. *LS* place this sentence before the previous one.

which the totality of their inferiors are singly empowered to do. I maintain, therefore, that should all the Christian bishops convene for any reason, whether intentionally or fortuitously, they would in that case be empowered to elect a supreme pontiff endowed with all the authority of St Peter himself, even though all or most of the laity and clergy were to disagree.

Question 5, Article 9: [St Peter was empowered to institute the apostolic succession]

- §22 But since this form [of election] would be extremely difficult, not to say impossible, let us make a ninth proposition: *that St Peter, either alone or with the other apostles, was empowered to institute the form and procedure by which his successor might be elected after his death.*

The proof of this is short and clear. Peter had plenitude of administrative power to carry laws convenient for the Church; but if there was any law necessary for the governance of the Church, it was this one concerning the election of the supreme pontiff. Therefore he was empowered to make it. A second proof runs as follows: the whole Church could have made this law, as indeed was done in the councils; therefore Peter was empowered to do the same, otherwise he would not have had supreme power.

This is confirmed by the fact that without the law carried by Peter, every other form of election would either have been impossible, if it stipulated the participation of the whole Church, or even just of the clergy; or otherwise a major cause of schism, if it stipulated the participation of all bishops. It was therefore altogether expedient that a fixed method and procedure of election should be given by law.

BUT A DOUBT ARISES about these propositions: the bishop of Rome is the supreme pontiff, and therefore, given that Peter had died, all that was needed to elect a bishop of Rome, and hence a supreme pontiff, was the vote of the Roman clergy. And the force of this doubt is increased by the historical fact that the Roman clergy, or the Roman populace, have on occasion elected the supreme pontiff.

I reply first with a point which I shall discuss in a moment, if there is time, the question of whether the bishop of Rome is supreme pontiff by divine law; and second, that if the Roman clergy or the Roman populace, once had the right to elect the supreme pontiff this must surely have been by some statute carried for this express purpose, or by received

custom, but not by divine law, since if the Roman clergy made the election and the bishops of Christendom ratified it, that of itself would have enabled such a form of election to be observed for a certain time.

§23 Question 5, Article 10: St Peter was empowered to elect and designate his own successor to be supreme pontiff after his death, without any further election

This proposition is not accepted by the modern theologians, who are a good deal more hostile to the dignity of the pope than is altogether decent for pious Christian writers. But it is proved, first, by the fact (if the true historical narratives are to be believed) that Peter himself, while still living, nominated a living man, Clement I, as pope, according to the canon *Si Petrus princeps* (*Decretum* C.8. 1. 1); this we have on the authority of Pope John III, who reigned under Justinian.³⁷ Secondly, it is proved by manifest and invincible logic: if, as proved above, he had the power to pass a law about the election of his successor, then he had the power to pass a law that a living pope could choose his successor.³⁸ Indeed, such a law seems likely to been of the greatest utility in preventing schisms and thwarting ambitious plots. Since it was the practice of the Romans when the magistracy of the consuls still existed to elect consuls designate, why should it not also have been possible for the supreme pontiff? Likewise, if he could pass a law that a living bishop could nominate his own successor, why not also the supreme pontiff?

Consequently, it must follow that any successor of Peter is clearly empowered to do the same as him, since he has the same power.

§24 Question 5, Article 11: The method of electing the supreme pontiff which is now observed in the Church is not established by divine law

This is obvious from the preceding articles, because the election is a matter for the bishops, barring any human statute to another effect.

37. The view that the pontiff himself has the power to elect his successor was held by Cajetan, *Libellus de auctoritate ecclesiae*; amongst the theologians who did not accept it, Vitoria must have been thinking of Almain, Mair, and other conciliarists who held that the *potestas primaria electiva papae* resided exclusively with the Church (see Skinner 1978: II. 45).

38. In the margin of *P* this phrase bears an annotation which is difficult to read, but appears to say 'but this is not true!' (*hoc tamen verum non est*).

Besides, the method is not mentioned anywhere in divine law. And again, the method could be changed by Peter's successors, as I have said; and it has not always been the same. Finally, the order of cardinals, who are now the papal electors, was not established by divine law.

- §25 **Question 5, Article 12: The method of electing the supreme pontiff is instituted by the authority of the Church, or of the supreme pontiffs, which is the same thing; and may be changed by the same authority**

This final proposition is the reason and origin for the apostolic succession of St Peter's authority and rank, which has come down to our own days, and will endure until the end of the world.

[Question 6, Article 1:
The succession of the other apostles]

- §26 **IT REMAINS TO DISCUSS** the successors of the other apostles. On this matter, let the first proposition be that *no one succeeded the other apostles with equal power and authority of jurisdiction*; that is, with plenitude of power over the whole world, such as any one of the apostles has been shown above to have possessed.

This proposition is proved, first, by the fact itself. We nowhere read of anyone other than the bishop of Rome who succeeded as bishop of the universal Church. Each of the other immediate followers of the apostles was called merely bishop of Jerusalem, or of Antioch, or of some other city. Second, because that universal power was extraordinary and personal as far as the other apostles were concerned, as I have said (4. 3 *ad fin.*), and thus could not be left by them to any successors, whereas Peter's power alone was ordinary and everlasting. None of them received such ample power from the Church; nor has the Church itself any power without its head. And we do not read anything to the effect that power of this amplitude was surrogated by the supreme pontiff (that is, either Peter or Clement) from any of the other apostles.³⁹ Third, it would have been a powerful occasion for schism and dissension amongst the successors, if those who were not confirmed in Grace had not had their own particular provinces.

39. *PL* quicquam subrogatum cuiquam apostolorum cum [cuiquam *P*] illa potestatis amplitudine : quemquam subrogatum quicquam apostolorum cum illa potestatis amplitudine *S*. The passage is corrupt; my translation is approximate.

- §27 **Question 6, Article 2:** Each apostle besides Peter was empowered to leave a successor, not universally but at least in whatever province he wished, to be the true bishop of that province

No doubt this proposition will fail to win the assent of the doctors, be they theologians or lawyers, or even of Cardinal-bishops Torquemada and Cajetan, since all of them are convinced that all jurisdictional power (*potestas iurisdictionis*) so depends on the Roman pontiff that no one can have the smallest particle of spiritual power except by his express command or statute – except the apostles themselves, who had it by singular privilege from Christ; no one else can have it except from Peter.⁴⁰

But my proposition is easily proven. First, any one of the apostles was empowered, while alive, to create a bishop in any province, who did not lose his power on the death of the apostle concerned. It follows that he could create a successor. The major premiss is obvious, because Paul appointed Titus and Timothy, and the other apostles had the same right as he. Taken in this sense, no one can deny the proposition.

But I must explain that this is true in the same sense in which I said that Peter could nominate a successor: that is, a successor who would only assume power after the apostle's death. So John was empowered, as I say, to nominate Ignatius to be bishop after him in the province of Asia. It has been abundantly proven above, and is not contested by my opponents, that while they were alive the other apostles had power equal to Peter's. So they could pass a law that each of them could elect his own successor; by virtue of that law, each could in the first instance elect his own successor. Now those who concede that the power of the other apostles was equal to Peter's must undoubtedly grant the major premiss; and if Peter could make such a law in the provinces, why not also Paul? The other apostles clearly did not have to wait for Peter's orders on each matter which needed dealing with in the provinces. This proposition seems to me not merely probable but quite beyond doubt.

- §28 **Question 6, Article 3:** The power to elect their own successor belongs not only to the apostles, but likewise to any of their successors

This proposition is obvious from the preceding article. Once John or Paul had passed a law by which a living bishop could nominate his

40. The papal publicists' claim that the pope was not only superior in jurisdiction, but actually the source of all lesser prelates' jurisdictions, was developed 'in its most extreme form' by Torquemada (Tierney 1955: 243).

successor, then Titus could nominate another. But I should add a further argument, which, though more difficult, seems to me to be no less true: even if Paul had passed no such law on this matter, Titus and Timothy were empowered to nominate their own successor without consulting the successor of Peter; and the same is true of all other [bishops].⁴¹

The proof is that a bishop is the pastor and governor of his province by divine law, and therefore, unless a greater power prevents it, he is empowered to do everything expedient for the safety of his province. But, especially at that time, it may have been expedient for a living bishop to nominate his successor, and therefore he was empowered to do so.⁴² Where are we told that a bishop may pass a law concerning the election of an abbot or parish priest or on any other matter, but not on the election of a bishop? And this point is further confirmed by the fact that this was not only possible and expedient, but at that time utterly necessary. If a bishop in furthest India had died, how could they have waited for orders from Peter before instituting a new bishop?

But all that I have said so far concerns jurisdictional power (*potestas iurisdictionis*). As for sacramental power (*potestas ordinis*), if 'episcopacy' means some orders or powers distinct from priesthood and jurisdiction (as I find almost all authorities agree), then some form of consecration as well as election would have been necessary for the institution of a pope or of bishops. But this could have been accomplished by any living bishop consecrating his own successor, or, if he had died, by the consecration of his duly nominated and elected successor by the bishop of another province.

- §29 **Question 6, Article 4: Any bishop was empowered to pass a law in his province to enable the presbyters to elect a bishop, or to designate any other form of institution, even without consulting the see of Peter**

This last proposition follows from the preceding articles, since the bishop was empowered to make laws convenient to his province, in this matter as in others.

Here you have, then, the explanation of how episcopal authority and rank could be handed down by succession from one generation to another, right down to our own day; and through the bishops, every other lesser power.

41. *LS* *episcopis : apostolis P.*

42. *LS* add 'and indeed to pass a law making this method perpetual'.

Question 6, Article 5: [The successors of Peter may create bishops and make all such laws and provisions as they see fit]

§30 Notwithstanding all this, and lest anyone think that I intend to derogate in any way from the dignity of the see of Rome, I make one further proposition: *that the successors of Peter were and are empowered to create bishops in every province as they see fit; to repeal any previous laws on this matter, and pass new laws; and to set the boundaries of their provinces, and make all necessary provisions concerning these matters, according to their judgment and power.* All that has been said above, then, is to be understood as valid only insofar as the see of Peter does not determine otherwise.

The proof of this proposition is clear. Peter was told 'Feed my sheep' absolutely, without any exception; therefore the whole administration without limitations belongs to Peter; consequently, so does the creation of bishops. If any of the other [apostles]⁴³ was empowered to do this, and if they did it, as we know they did, then so much more does it belong to Peter and his successors.

A first corollary of this is *that no new bishop can now be created except according to the traditional form handed down by the supreme pontiffs.* If any attempt is made to act otherwise, it will have no validity, being totally invalid and void. I mean as far as the authority of jurisdiction goes; it is otherwise with consecration.

The second corollary is *that ecclesiastical power, whether sacramental or jurisdictional, mediately or immediately, is wholly dependent on the see of Peter.* This is obvious, because the bishops are dependent on that see, and priests and all inferior orders and powers are dependent in turn on the bishops. And the see is dependent on God, to whom be praise and glory and supreme power for ever and ever, Amen.

Glory be to God almighty, world without end.

43. *LS apostolorum : episcoporum P.*

ON LAW

(*Lectioes in ST I-II. 90 – 105 De lege*)

These lectures On Law were delivered in the academic session of 1533 – 4 as part of Vitoria's day-to-day teaching of Aquinas' Summa, which he was then working through for the third time in his career (the full cycle took roughly seven years). It was to be the last time he would cover ST I-II; a fourth cycle, begun in 1539, had to be abandoned to substitutes by Christmas 1540 because of illness.

The extracts translated here consist of lectiones 121 – 9 and 136 – 7 (from the session's total of 154 lectures). The Spanish academic year began on the Monday after St Luke's Day, 15 October; these lectiones would thus have been delivered around Whitsuntide of 1534, roughly at the beginning of our summer term. Officially, Vitoria should have been covering the university's set text for theology, Lombard's Sentences, but he preferred Aquinas. This was not the only liberty Vitoria took; the copyist of our MS notes that he omitted the 'easy' questions 25 – 49 altogether, 'so as to get through the text by the end of term' ('ut possemus hoc anno finem imponere toti 1^e 2^e', fol. 29^v). In the lectures translated below Vitoria omits some of Aquinas' articles, or dismisses them with a phrase.

The lectiones survive only in students' reportata. The ones translated here are taken from the anonymous Vatican MS Ottob. 1000.¹ The number of the lectio is given in the running title, and in the left-hand margin; the articles of Aquinas to which each section of the commentary refers are supplied in bold face headings in the text, and in brackets in the running titles. The quotations from Aquinas, which are printed in italics, have been adapted from the Blackfriars English translations by Gilby (vol. XXVIII, qq. 90 – 7 Law and Political Theory) and Bourke & Littledale (vol. XXIX, qq. 98 – 105 The Old Law).

1. The text is edited in Vitoria 1952: 11 – 93. For a description of the MS, which he describes as 'rigorously scholarly', see Beltrán de Heredia 1928: 67 – 8.

LECTURES ON ST THOMAS AQUINAS

ST I-II. 90: On the essence of law

§121 **Article 1: Is law a function of reason?** AQUINAS REPLIES that *law is a function of reason* because *giving commands issues from reason*, and law is *a kind of rule or measure for human activity*, the word *lex* being derived from the verb *ligare* 'to bind, oblige'. It is clear that law belongs to our rational nature, and can exist only in the senses or in the intellect. It does not exist in the senses, *ergo*.

A DOUBT ARISES whether law belongs to the will or to the intellect? Gregory of Rimini appears to hold that *law is the divine will, and therefore belongs to will* (in Lombard's *Sentences* I. distinctio ultima).

1. To this end he adduces Augustine, *Contra Faustum* 22. 17: 'eternal law is the reason or will of God'. Hence law belongs to the will, or at least is the will and reason of God. Modern theologians commonly agree when speaking of laws.

BUT ON THE OTHER HAND Peter Lombard himself eloquently and expressly states that law is not a matter of will (*Sentences* I. 41).

IN REPLY, Lombard distinguishes two categories of divine will: one means God's actual pleasure or inner will (*uoluntas beneplaciti*), the other refers to some external manifestation of it (*uoluntas signi*), as we talk of 'God's anger' when we mean some manifestation of anger. In this sense, law is an external manifestation of will, not the inner will properly speaking. Lombard points out that when we say in the Lord's prayer 'Thy will be done in earth as it is in heaven', we must understand this to mean not that His pleasure and inner will should be done (since that will happen whether we want it or not), but that His will should be made externally manifest; as if to say, 'thy law be fulfilled'. So too we must understand *will* in the passage 'not every one that saith unto me, Lord, Lord, shall enter into the kingdom of heaven, but he that doeth the will

of my Father which is in heaven' (Matt. 7: 21); because, of course, both faithful and infidel do the *inner* will (*uoluntas beneplaciti*) of God. A further proof of this is that God sometimes prescribes the effects of a law, and sometimes prescribes what He does not wish to be done, as in the case of Abraham's sacrifice of Isaac. Lombard seems to take the same view in *Sentences* I. *distinctio* ultima. 2, where he proves that man is obliged to conform to the divine law, and much more so to the divine will, by saying that divine law is 'the effect of divine will'; which is as much as to say that divine will is not the same thing as law.

Now St Thomas has already discussed the question *whether human will must be conformable to divine will to be good* (ST I-II. 19. 9); and he replied there that it must, since the divine will is *a measure of human will*; if it is a measure it must be *a rule*, and if it is a rule it must be *a law*. And here, in his reply to the third, he seems to hold the same opinion. So it does not seem illogical to concede that both divine will and divine reason are law. As far as law's immediate dependence on reason is concerned, the proof is that if the pope promulgates a law saying 'I wish all Christians to fast', the act is not law because his wishes are not binding, only his commands. Law, therefore, is not an act of will. On the other hand, it might be argued that if he prescribes something which he does not wish to be done, we are in this case obliged by his wish, and so on.

Someone might reply to this that 'I wish all Christians to fast' is not an act of law, but that 'I wish to oblige all Christians to fast' is. But I hold that even this is not an act of law. Obligation is only involved when embodied in a prescription. The proof is that the will does not have an inclination to act according to natural law; it is an established fact that it has an inclination to do the opposite. Therefore natural law is not an office of will, but of reason and enlightenment: 'the light of thy countenance, O Lord, is sealed upon us' (Ps. 4: 6).² A further proof is that advice is part of law, as in 'if thou wilt be perfect, [go and sell that thou hast, etc.]' (Matt. 19: 21); and advice belongs to reason, not will. To give commands belongs likewise to the intellect, not to the will, as proved above, since 'to prescribe' is 'to pronounce' or put into words, and speech is an act of reason, not of will.

But one might then ask, what sort of act of reason is law? This is the problem addressed by Aquinas in his reply to the second, where he says:

2. AV 'Lord, lift thou up the light of thy countenance upon us.' Vitoria quotes the Vulg. text, alluding to an argument from the next question, where Aquinas interprets *lumen* in the Biblical passage as 'the light of natural reason by which we discern what is good and what evil (which belongs to natural law), which the Psalmist implies is nothing but the impression of divine light on us' (ST I-II. 91. 2).

As with outward acts a distinction can be drawn between the doing and the deed, so also with the activities of reason the actual thinking and what is thought out can be considered apart, etc. He then defines an act of reason as an agreement or judgment which forms the conclusion of a syllogism.

Note carefully his reply to the third. This is all confirmed, because all doctors agree that a good act is one which conforms to law, while an evil action is one which does not. But what conforms or fails to conform to law also conforms or fails to conform to reason.

Article 2: Is law always ordained to the common good? AQUINAS REPLIES that *every law is shaped to the common good*, the proof being that *the last end of human living is happiness*, and other ends are ordered towards the last end.

That law is ordained to the common good may be understood in two ways: first *de iure*, because it should be so; and second *de facto*, not only because it should be so, but because if it were not so it would cease to be law. In the same way we speak of some things being necessary by prescription, and others as being necessary in fact.

This being the case, we may reply that law is ordained for the common good in both senses. A prince may not invent a law which has no regard for the common good, since otherwise the law will be tyrannical, not just.³ The prince fulfils a public role which is itself ordained for the public good, and he is a servant of the commonwealth. A prince may of course look out for his own private good, but not through the law.

Second, I assert that a law cannot be against the common good, not only *de iure*, but also *de facto*, because in that case the law would be no law. If it were established that a law in no way concerned the common good, that law should not be obeyed.

FROM THIS FOLLOWS THE COROLLARY that if a particular law, though fairly enacted and just in itself, becomes useless in the passage of time, that law ceases to be effective and is no longer binding. It follows that, however just a law may be, if there is some country where it is useless or harmful, that law should not be kept in that country (though one must remark that a law may be useful to the community, but useless to one or two individuals). If the usefulness and reason for fasting were to cease, no further repeal of the law would be required to stop fasting; or, to take a different example, if it were established that the law prohibiting marriage within the degrees of consanguinity was no longer useful, that

3. The definition of a 'tyrannical law' as one aimed at the private benefit of the ruler is based on Aristotle, *Politics* 1279^b6 and *Nicomachean Ethics* 1160^b8; see also ST II-II. 42. 2 ad 3.

law too would cease to be effective without further need for repeal, since it would no longer have any binding or obliging force.

Article 3: Can anybody legislate? AQUINAS REPLIES that to make laws is not the office of anybody's reason, but only of the vicegerent or person who has care of the community, because his business is to plan for the common good, which is the concern of law.

A DOUBT IS RAISED ON this point by Cajetan, though it seems to me to be a mere quibble. He asserts that although this conclusion is true of the civil commonwealth, it is not true of the spiritual commonwealth, because God is neither the community, nor the vicegerent of the community. Hence the pope is not the vicegerent of the community, nor does he derive his power from it. The reply to this is that Aquinas did not mean by 'vicegerent' that the pope must have his authority *from* the community, merely that he has care *of* it.

ONE MIGHT RAISE A MORE LEGITIMATE DOUBT as to whether any sort of multitude can promulgate a law. Aquinas answers this in his reply to the third. What he means is that a multitude or community (*ciuitas*) can be of two kinds. One is *imperfect*, which is part of another, like a household; such a community (that is to say, *the ruler of the family*) cannot make laws because it is concerned only with its own private good, but it *can issue precepts and standing orders* to be obeyed in its own household. The other kind of community is *perfect* or self-sufficient, and this can certainly make laws.⁴

I was once asked whether, when a vow had been taken in a certain city to fast on the eve of a certain saint's day, people would be obliged to fast simply because the majority had taken this vow. My reply is that they would not be obliged to do so because of the vow, since no one can make a vow on someone else's behalf; but they might very well be obliged by law, if such a law had been passed.

Article 4: Is promulgation essential to law? THE QUESTION is whether promulgation is essential to law; for instance, if the king prohibits mules and I find out about this before the law is promulgated, am I bound to obey the injunction?⁵ Against this is Gratian's statement in *Decretum* D.4 d.p.c. 3 that 'laws are instituted when they are promulgated'.

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4. The definition of communities as 'perfect' or 'imperfect' derives, as Aquinas says, from Aristotle, *Politics* 1252a5; cf. *On Civil Power* 1. 2, footnote 18.
 5. Royal prohibitions against the breeding of mules (thought to pose a threat to the pure stock of horses) existed in Spain from the late fourteenth century until 1889, though only south of the River Tagus. Vitoria, evidently tickled, cites this ridiculous law over and over again: see §122, §125, §126 (twice), and §137, sixth proposition.

AQUINAS REPLIES that promulgation is essential to law because *a rule has to be applied to those whom it is meant to rule and direct*, and promulgation is this application. So from these first four articles we obtain the following definition of law, that it is '*an ordinance for the common*', etc.⁶

BUT THERE IS STILL SOME DOUBT whether promulgation is essential to law. The question is whether a law becomes law at the very moment it is enacted, before it is promulgated. For instance, if the pope were to move the fasting now prescribed for Fridays to Wednesdays, and if we were to eat meat on a Wednesday just before this ruling were promulgated, would we be breaking the law? This is not the same as asking whether we would be pardoned on the grounds of ignorance, which is quite a different question. After all, the barbarians break Christ's law, but this is pardonable if they have never heard anything about it.

Take the following case: if the pope were today to prohibit marriage within the fifth degree of consanguinity, we know very well that someone in Salamanca who is today getting married to a girl related to him within the five degrees is not committing a sin; but is he breaking the law? The case is certainly doubtful, with arguments on both sides. On one hand, a law which has not been promulgated is apparently not a law; the proof of this is that to carry a law means 'to make a command', and hence 'to pronounce', as I was saying in the first article. But in this case the pope has neither made a command nor pronounced his prohibition to anyone, and therefore it is not law. The confirmation of this is that if it were truly law, although the law-breaker would be pardoned from any guilt, his contract would not be binding and his marriage null; just as someone who in invincible ignorance contracts a relationship which in fact makes him a fornicator, because his wife turns out to be related to him, is not legally married.

BUT ON THE OTHER HAND law appears not to require promulgation, because a man who marries a wife within the fourth degree of consanguinity is also not legally married; and yet no law to this effect has been passed.

I REPLY to this with some propositions. Law is of two kinds, divine and human; and the first of these is of two kinds, natural and positive.

1. MY FIRST PROPOSITION applies generally to all three types: *whoever is invincibly ignorant of a law because of a failure to promulgate it is pardoned from all guilt and from every penalty prescribed by the law*. This I have explained above. So if anyone is ignorant of the canon *Si quis*

6. Aquinas' definition continues '*... for the common good made by the authority who has care of the community and promulgated*'.

suadente diabolo (Decretum C.17. 4. 29), he is pardoned both for any guilt which falls under the heading of that canon, and from the penalty of excommunication which it carries.⁷

2. MY SECOND PROPOSITION refers to natural law, and declares that *natural law is true and obligatory law, however invincible a person's ignorance*. If a man commits fornication not knowing that it is prohibited by natural law, he breaks the law, even though he may be pardoned on the grounds of ignorance. The proof is the general consensus of men. Everyone says of such a man that he must be ignorant; but if he was not bound by that law, he would not be pardoned on the grounds of ignorance. Ignorance, then, is when a man thinks he is not bound by a law, but is. For example, if one man eats meat on a Friday before news of the law against it reaches him, and a second man does so after the carrying of the law but before it is promulgated, both are pardonable; but only the first is pardonable on the grounds of ignorance. Or take another example, this time in natural law: if a man marries his sister, even in invincible ignorance [of the law], the marriage is null, although the man is pardoned from guilt on the grounds of ignorance. That means that the law was true, binding, and effective even for those to whom it had not been promulgated; and also that according to all the doctors such a man would be pardonable on the grounds of ignorance.

§122 A further proof is that there can be no dispensation from or repeal of natural law or any part of it. It is therefore *always* binding (since dispensation means, in effect, that a law is not binding on someone). And this means that as far as natural law is concerned, there is no need to wait for its promulgation before it becomes binding. If you object that St Thomas is speaking generally of all laws when he says that promulgation is essential to law, my reply is that I do not mean that a law should not be promulgated, but that it is sufficient that it should be promulgated only amongst a certain number of men, that being sufficient to make it a law throughout the world.

MY NEXT SET OF PROPOSITIONS, coming now to positive divine law such as Mosaic law, answers the question of whether the people are bound by such law before it is promulgated, although they are pardonable on the grounds of ignorance. Can they eat pork just as they could before?

3. The first proposition under this head is that *such law has no effect before promulgation*. Moses prohibited several degrees of consanguinity

7. The decretal forbids laymen from 'sacrilege', that is from physically violating the clergy. Vitoria is appealing to his audience's sense of humour in suggesting that anyone could be ignorant of it.

and kinship, amongst which were some which I do not believe to be part of natural law, such as marriage to one's brother's paternal aunt or wife. If any man had married such a wife before Moses came down from the mountain with the tablets of the Law, would his marriage have been null? I assert that the marriage would have been valid and binding. A further example is furnished by circumcision; after the law concerning circumcision had been given to Abraham but before it was promulgated, a child who happened to have been circumcised would not gain the same merit, because at that time there existed no law or obligation. The proof is that such a law existed from eternity in the mind of God, and yet was not binding from eternity; therefore it clearly began to be binding only when it was promulgated. The confirmation of this is that to 'prescribe' means to promulgate and 'pronounce', but God does not give commands to Himself but to men, and this He does by speaking to them. Before He pronounces and promulgates His laws, therefore, they do not have the force of law.

4. MY FOURTH PROPOSITION is that *positive divine law is effective for all and binding on all before it is promulgated to all*. The mere fact of promulgation is sufficient. Thus the law of the Gospel began to be binding on all men from the moment it was first promulgated, although those whom news of it had not yet reached were pardoned. And it is still true today that everyone in the world is bound by the law of Christ, although those who have yet to hear of it are pardoned. Before the evangelical law came in, a man could repudiate his wife and give her a bill of divorcement (Deut. 24: 1-3; compare Mark 10: 2-9); but if a man who had no knowledge of evangelical law were nowadays to do that, the Church would compel him to return to his first wife, if he himself was converted to Christian law. This is confirmed by the case of Jews who may be invincibly ignorant of Christ's law: would circumcision have the power to confer merit on them? I maintain that it would in no way do so; it is false and erroneous to say that a man gains merit by circumcision, since the Old Law has entirely ceased. The other law, namely the evangelical, has been effective and binding on all men ever since it was promulgated.

MY NEXT SET OF PROPOSITIONS, coming now to positive human law, begins with the following:

5. *Human law is not binding without promulgation, nor has it any effective force*. This can be proved by reason, since to carry a law is to prescribe, and to prescribe is to pronounce and promulgate; therefore it is not effective before promulgation. If a prince were to make a law that entails might be alienated or something similar, with effect from the

instant the law was made, any contract of sale of an entail made before the law was promulgated would be void, while any made after its promulgation would be valid. That is, the law has no force before promulgation. The proof of this is that the legislator acts in a public role; he therefore has no power to enact laws unless he promulgates them in public. Furthermore, a judge who pronounces sentence in a case may afterwards revoke it, on condition that he has not yet published it. This is a demonstration that his sentence was not binding before being made public; and the case of a law is similar.

6. MY NEXT PROPOSITION on this category is that *a private promulgation among a few people is not sufficient to make a human law binding, even on those who know of it*. It takes a solemn act of promulgation to make a law binding. This is the view of the canonists, especially Nicolaus de Tudeschis (in X. 1. 5. 1). The proof is that only a public representative has the authority to make law, and a law privately promulgated is not law. This is reasonable, since human laws are supposed to save souls, not catch them out; but private promulgation, if it were sufficient to make binding laws, would be a considerable trap.

7. MY THIRD PROPOSITION in this connexion is that *for a human law to be binding on all men it is not necessary that it should have been promulgated to everyone*. If such a law were promulgated in a cathedral or similar public place, it would begin to be binding on all men, even those who were not present. But if one of these absentees breaks the law, he will have the excuse of ignorance. The confirmation of this is that contracts which contravene human laws, such as the sale of goods by a minor in guardianship, are rescinded even though the parties to the contract may have acted in ignorance of the law.

8. MY FOURTH PROPOSITION in this connexion is that there is a difference in this respect between the laws of an inferior and the laws of princes; *for the laws of an inferior to be binding, one public promulgation is not sufficient*. Such a law must be promulgated in my own country for me to be bound by it, even if I know that it has been promulgated elsewhere.

9. MY FIFTH PROPOSITION in this connexion is that *for a law of princes to be binding and effective, it is necessary and sufficient that it be promulgated in each separate province concerned*. Thus if a prince were to enact in Flanders a law which was universal for all his kingdoms, and promulgated it in that country, it would be valid in Flanders, but not in Spain until it was promulgated there too, even though Spaniards knew of it.

10. MY SIXTH PROPOSITION on this head is specially concerned with papal constitutions. *For such a law to be binding, some say that it is sufficient to promulgate it in Rome*. Thus if the pope were today to

prohibit marriage within the fifth degree of consanguinity and someone were to contract such a marriage, the marriage would be invalid, even if he did not know of the papal constitution. This is the opinion of the canonists such as Nicolaus de Tudeschis, in his commentary on the decretal *Nouerit* (in X. 5. 39. 49). This is doubtless the safer and more pious opinion. But others such as Angelo Carletti da Chivasso in his *Summa Angelica* say that such papal constitutions are not binding in Spain until they are promulgated here, at least on those who do not know of them. And this seems the opinion which is more truthful. It follows that whenever papal excommunications⁸ are found outside the *Corpus iuris canonici*, they are not binding, even on those who know of them, since they have not been duly promulgated. Promulgation must be public, or it is not acceptable.

ST I-II. 91: On the varieties of law

Article 1: Is there an eternal law? AQUINAS REPLIES that there is, the proof being *that law is nothing but a dictate of practical reason* which God has possessed from eternity. Whether every divine law is eternal is a question for later; for the moment we may say yes, every divine law is eternal in God, but not in us.

Article 2: Is there a natural law within us? AQUINAS REPLIES in the affirmative, because although the rules of law are in God *as in the thing which is the rule*, the knowledge of them which is channelled into us as an effect of the divine rule is also called *a rule and measure*. From this article you may deduce that our judgment and knowledge, which I rely upon when I dictate that such and such is to be done, does not oblige *per se*, but only insofar as it derives from eternal law. All the rest is clear.

Article 3: Is there a human law? AQUINAS ASKS not because there is any doubt about it, but simply for clarification. Human laws derive in some way from natural law. It is a natural law that the commonwealth must be defended; from this derives the human law which prohibits mules.

Article 4: Was a divine law necessary? HE MEANS 'besides natural law'; and the answer is that *a divine law of revelation was required besides natural law and human law*. This he proves with four reasons. On the

8. The decretal *Nouerit* concerns a general papal excommunication of heretics by Honorius III.

third reason, whether human law can punish, prohibit, or *guide on inward behaviour*, we shall have something to say later. There are various opinions on the topic, but one argument which is certainly weighty is that it cannot because it has never succeeded in doing so. But others point out that in the decretal *Dolentes* (X. 3. 41. 9) the clergy are ordered to recite their liturgical Hours 'attentively and devoutly'; furthermore, heretics can be excommunicated for inward behaviour. I shall have more particular things to say of this later, on the passage where Aquinas raises the question himself.

On the question as a whole, a doubt may be raised whether anyone was saved in natural law, when there was no divine law? The Apostle said: 'because when they knew God they glorified him not as God, etc.' (Rom. 1: 21). St Thomas asks (*ST* I. 1. 1) whether any revealed knowledge is necessary in addition to the physical sciences; he replies that it is, for the same reason as this, and because human science is full of errors and requires a great deal of time. Again, he asks (*II-II*. 2. 3-5) whether faith is necessary, and answers that it is. To the argument that some were saved in [natural] law, therefore, it may be answered that Aquinas does not mean that divine law is necessary for each individual, but that it was amongst God's folk. How necessary is clear, 'for as many as have sinned without law shall also perish without law' (Rom. 2: 12). Secondly, I assert that there has never been a people or church of God which did not have some men to whom divine law had been revealed or explained by their forebears. Even if it were not necessary for the adults, it would certainly be necessary for the children, who cannot and have never been able to be saved without divine law, because they are shapen in iniquity and conceived in sin (Ps. 51: 5).

Article 5: Is there but one divine law? AQUINAS REPLIES that laws *may be distinct in two manners, first as being different in kind (and second as being fully developed or undeveloped things of the same kind)*. Thus there is one law and one faith. This is all clear.

Article 6: Is there a law of lust? HE RAISES THIS QUESTION merely in order to clarify the Apostle's saying ['But I see another law in my members warring against the law in my mind' (Rom. 7: 23)].

§122b

ST I-II. 92: On the effects of law

Article 1: Is it an effect of law to make men good? AQUINAS REPLIES that *making men good is the wish of every legislator*. And he adds a second

conclusion, that the quality of the law determines the goodness of the subjects.⁹

There is only one difficulty here. It may be asked how the first conclusion, that law makes men good, is to be understood: is it true universally of all laws? There is no doubt about natural law, nor about positive divine and ecclesiastical law. The doubt concerns civil law, and whether the intention of the king ought to be to make men good, or wealthy and secure.

We must note the point made by Aquinas, *that it is moral virtue which makes men good absolutely speaking*. Thus a great philosopher cannot properly be called 'good' absolutely speaking; we must say he is 'a good philosopher', or 'a good theologian', and so on. To ask whether the intention of a legislator is to make men good, therefore, is tantamount to asking *whether he ought to direct men absolutely speaking to the moral virtues*.

NOW THERE ARE SOME WHO THINK NOT. If the legislator does so, it will be only in such measure as he is himself a good man, not because it is his business to make men good:

1. Legislators, they say, are like craftsmen, whose concern is to achieve not moral but technical excellence. The purpose of the king is the same as the purpose of the community (*ciuitas*) or commonwealth, which is that men should not have to live in the wild like beasts, since one man on his own is not self-sufficient, lacking many of the things he needs and incapable of providing them all. Man cannot live alone, but needs the mutual help of others. Now it appears from this that a community is not brought together for its moral good, but to meet this need. But if the purpose of the community and of the legislator are the same, the purpose and intention of the legislator is not to direct men to the moral good, but to a natural good, namely the meeting of that need.

2. A confirmation of this is that the civil and ecclesiastical legislative capacities (*facultates*) would then be indistinguishable, since the purpose of ecclesiastical law is also to make men good absolutely speaking; but such capacities should be distinguished by their purpose. A further confirmation is that it would then be the business of the civil power to establish the sacraments of the Church, since these are clearly necessary for making men good absolutely speaking, and that in turn would mean that the king would be in charge of making ecclesiastical laws, which is patently false.

9. Both conclusions are based on Aristotle, the first on *Nicomachean Ethics* 1103^b3, the second on *Politics* 1260^a15-33.

3. Yet another confirmation is provided by St Thomas' reply to the third, which states that although a man may be evil as far as his own conduct is concerned, he may nevertheless be good and law-abiding as far as the common good and civil laws are concerned. For instance, one can commit fornication or perjury or murder one's wife for adultery without breaking any civil law; but those who do so are not good men absolutely speaking.

BUT ON THE OTHER HAND the usual answer is to deny that a man can behave well as far as the common good is concerned, but evilly as far as his own conduct is concerned; as long as there are quarrel-makers, money-grabbers, or common thieves about, the common good cannot flourish, because it is made up of individual acts of goodness. You cannot make a good house out of bad parts. But St Thomas inserts one phrase in his reply to the third which appears to undermine all this. He says the common good can flourish *so long only as the princes are good*. This phrase seems to concede that the common good can flourish even if everyone else is evil, because it is possible to be a good citizen without being a good man.

I REPLY to this question that the intention of the king is without doubt to make men good absolutely speaking and to direct them to virtue. The proof is, as Aquinas said and proved earlier (I-II. 90. 2), that the final purpose of law is the common good. Hence:

TO THE FIRST the law must take as its chief concern the common good, which is happiness (*beatitudo*). Aristotle also says 'those enactments are just that tend to produce and preserve happiness' (*Nicomachean Ethics* 1129^b17). Now other philosophers put the source of happiness in virtue; and Aristotle himself, though he conceded that things such as wealth (which these other thinkers consider indifferent) may contribute to happiness, said that the substance of happiness is founded in virtue.¹⁰ Therefore, since the greater part of contentment (*felicitas*) is founded in virtue, men cannot be good citizens merely because they are wealthy, but only if they are studious of virtue.¹¹ This can also be proved by authorities from Holy Scripture: 'Let every soul be subject unto the higher powers, for there is no power but of God' (Rom. 13: 1). This means that the purpose of power is also from God. And it goes on:

10. The 'other philosophers' are clearly the Stoics, to whom 'indifferent' (*adiaphora*) was a technical term for goods which do not affect true happiness.

11. Vitoria writes *studiosi virtutis*: cf. I *On the Power of the Church* 1. 2, footnote 15.

'whosoever therefore resisteth the power, resisteth the ordinance of God'. If laws effect nothing but natural benefits, why does he who resists the king resist the ordinance of God? It adds: 'and they that resist shall receive to themselves damnation'; and 'wilt thou then not be afraid of the power? Do that which is good.' It follows that the legislator intends to make men good absolutely speaking; Peter says more to the same effect, in the passage where it is written: 'submit yourselves to every ordinance of man for the Lord's sake' (1 Pet. 2: 13).

A further proof is that the republic has the authority to direct men to useful and pleasurable goods, which are lesser goods; it must then have the authority to direct them to virtue. Authority can only be exercised through law. Therefore the intention of law is, etc. Again, the head of a family has the care of educating his children in good behaviour; but the family is part of the commonwealth, so the commonwealth has this power in even greater degree. Finally, princes have enacted laws concerning moral goodness, such as prohibiting blasphemy, sodomy, and so on; laws must concern moral actions, or these would be invalid. Even if in some cases they appear to be concerned only with their private good, such as *alcabalas* (*gabellae*), they are nevertheless for the common good.

TO THE SECOND, the argument that the [civil and ecclesiastical] legislative capacities (*facultates*) would be indistinguishable, the reply is that civil princes intend to make men good in terms of human contentment (*felicitas*), while the pontiffs of the Church direct them to eternal happiness. The former deal with human happiness, the latter with eternal. And this provides the answer also to the confirmation of this point, the one concerning princes having the authority to make laws about the sacraments. I say first that it is not beyond the faculty of princes to ignore the sacraments. But once they have taken notice of them and are informed about them, princes may carry such laws, so long as they do not confuse their powers. Thus civil laws have been enacted on the burning of heretics and so on, a matter which concerns the supernatural good.

TO THE THIRD, let us concede the point, though difficult, that a man may obey all the civil laws but still not be absolutely good, for example because he is a fornicator; the consequence, however, is denied, because otherwise by the same argument you could prove that even the pope does not intend to make men absolutely good, since a fornicator does not break any of his laws either. So a prince does not intend to make men happy absolutely, but only in terms of human happiness.

Article 2: Are the acts of law properly defined? I have nothing to say.¹²

12. The four 'acts of law' are commanding, forbidding, permitting, and punishing.

ST I-II. 93: On eternal law

THERE IS NOTHING which needs clarification in the first or second articles.¹³

Article 3: Does every law derive from the eternal law? AQUINAS REPLIES that they do. The proof is that inferior crafts are subordinate to superior ones, as bridle-making is subordinate to the art of war.¹⁴ God is the supreme legislator; *ergo* other laws, etc.

A DOUBT ARISES as to how positive divine law derives from the eternal law. Cajetan seems to argue that 'eternal law' should here be understood as mere 'natural law'. But as far as I can grasp, St Thomas understands 'eternal law' as the whole of divine law absolutely. If you reply that in that case all human law is divine, since it derives from divine law, I deny the consequence; my meaning is simply that it does not contradict divine law. The directives of human law are to ensure the observance of divine laws; it must be derived from the latter in some way, because in any practical deduction about it one always needs a major premiss from natural or divine law.¹⁵

Article 4 is about the things which are governed by the eternal law.

Article 5: Are the contingent facts of nature under the eternal law? AQUINAS REPLIES that everything is subject to the eternal law except God, since *nobody imposes a law on himself*. On this point, Cajetan makes the remark that princes are not bound by their own laws. But I shall come back to this later.

Article 6: Are all human affairs subject to the eternal law? AQUINAS REPLIES by distinguishing between *two ways of being subject to the eternal law*, one of which is *by knowledge*; from this passage, you will deduce that St Thomas did not understand 'eternal law' to mean merely 'natural law'. He concludes that everything is subject to the eternal law by

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13. These two articles establish that the eternal law is the supreme plan (*summa ratio*) in the mind of God, and that it is recognized by all.
 14. This Aristotelian comparison, which was something of a favourite with Vitoria (compare *On the Power of the Church* 5: 5-6, footnote 53), does not appear in Aquinas, who merely says 'the execution of a sovereign's orders descends to subordinate administrators as, in manufacturing crafts (*artificialibus*), the plan (*ratio*) descends from the architect to the inferior craftsmen and manual workers'.
 15. On Vitoria's view of the cognitive effects of natural law as the deduction of *secunda praecepta* from the first precepts by means of a practical syllogism, see the Introduction, pp. xiv-xv.

natural inner compulsion (*inclinatio*), only rational creatures by knowledge (*cognitio*). But note the important distinction he makes in the interpretation of the passage 'If ye be led of the Spirit, ye are not under the law' (Gal. 5: 18), which he expounds in two ways.¹⁶

ST I-II. 94: On natural law

§123 **Article 1: Is natural law a disposition?** THE ARGUMENT AGAINST is drawn from Augustine's statement 'a disposition (*habitus*) is that by which a man acts when there is a deed to be done' (*De bono coniugali* 21). Aquinas establishes his conclusion that *properly and essentially natural law is not a disposition* because a disposition (*habitus*) is not something constituted by reason as law is (being a sentence or judgment of some kind). But a disposition (*habitus*) can also be understood in a *derivative sense*, as when an action is called a disposition or custom simply because it is habitually repeated (*in habitu*). In this sense, natural law is sometimes spoken of as a disposition not because it is a disposition (*habitus*), but simply because it is habitual (*in habitu*). And as in matters of theoretical science (*speculativa*) we do not talk of *the first indemonstrable principles of thought as mental dispositions*, so too we do not use this language in ethical conduct (*practica*). Therefore natural law is not so called because it exists within us by nature: children have neither natural law nor the disposition for it within them. It is so called because we judge what is right by natural inclination, not because of some naturally implanted quality (*qualitas*).

We should remark what Aquinas says in his reply to the first, where he explains a difficult passage of Aristotle. Aristotle says that 'things that are found in the soul are of three kinds, passions, faculties, states (*habitus*)', and that virtue must therefore be one of these (*Nicomachean Ethics* 1105^b20).¹⁷ Modern scholars are surprised that he omitted to include *actions* in this list; they say that he did not use the term

16. Namely, spiritual men fulfil the law of their own will through charity, not for fear of punishment like those 'under the law'; or alternatively, the Spirit is not under the law, and hence deeds prompted by the Spirit are not under the law.

17. Aristotle's word *hexeis*, translated by the scholastics as *habitus* and in the Oxford Translation as 'states', is defined by him in the same passage as 'things in virtue of which we stand well or badly with reference to the passions' (compare ST I-II. 49 – 54). *Habitus* is further defined as a species of *quality* or *dispositio* (ST I-II. 49. 1 – 2; compare Aristotle, *Categories* 8^b25 – 9^a9; *Metaphysics* 1022^b20); it is to this definition that Vitoria alludes at the end of the previous paragraph. The translation of *habitus* as 'disposition' is an attempt to clarify this usage.

'passions' in its strict sense, but broadly to include 'actions' as well.¹⁸ But Aristotle cannot have meant this, because he goes on to prove that virtue is not a passion: 'we are not called good or bad on the ground of our passions, but are so called on the ground of our excellences and vices' (*ibid.* 1105^b29–31), because passions are not a matter of free choice, as these moderns think. So Almain asserts that 'passions' can even be broadly understood to stand for acts of appetite or will; but he does not dare to say that Aristotle understood it so. In this connexion, note that neither St Thomas nor Aristotle strive to prove the points which are obvious *per se*, namely that *virtue is a principle of goodness*, and that it is not a faculty or a passion. And it is obvious *per se* that *besides these three there are other psychological realities, for instance certain acts*, etc. (ST I-II. 94. 2 ad 1).

Article 2: Does natural law contain many precepts or only one? AQUINAS REPLIES by making a distinction, in the light of which he draws a threefold conclusion. *Just as there are things self-evident in the theoretical sciences (speculativa), so there are too in ethical conduct (practica).* But, as Aristotle says, 'it is not the same to be self-evident by nature, and self-evident to us' (*Posterior Analytics* 71^b34–72^a2). Some things are self-evident of their nature, but not self-evident to us, such as the existence of God; in respect to these our understanding behaves like a bat's eyes in the sunlight, as Aristotle says. But others are so self-evident in themselves that they are even self-evident to us, like the fact that the whole is greater than its parts; such propositions are called 'axioms' (*dignitates*), which anyone who hears them will approve.¹⁹ Yet a third class are things self-evident in themselves, but recognized only by the wise, not to all men irrespective of their knowledge.

So it is too in ethical conduct (*practica*): some principles are recognized by everyone, such as that good should be done, while others are not self-evident to all. The proof of this is that there are several principles. To act against natural inclination is to act against natural law; but there are various natural inclinations, and hence several principles. And so Aquinas' argument continues: *each has a natural inclination to preserve its own being*, and each is therefore obliged to preserve himself.

BUT A DOUBT ARISES as to whether this is a valid deduction. Some deny it. I would ask one of these doubters, however, how otherwise could he

18. The text adds a reference to '3 d. 22', which remains unidentified; normally Lombard's *Sentences* III. 22, but Lombard was hardly a 'modern' scholar.

19. The phrase, with the curious technical term *dignitates*, is quoted by Aquinas from Boethius, *De hebdomadibus* (PL LXIV. 1311).

prove that suicide is a sin in the absence of a written law? There is no proof besides this one. I affirm, therefore, that Aquinas' proof is sufficient: if a thing is against natural inclination it is prohibited, if it is according to natural inclination it is a precept. My own untutored understanding judges that life is a good, that parents should be loved, and so on; my will is naturally inclined to all these things. From this principle, we may validly infer that what a man is naturally inclined towards is good, and what he naturally abhors is evil. Otherwise, if my inclination deceives me, the fault of the deception must lie with God, who gave me this inclination. The understanding tells me nothing but what is true, and the will is inclined towards it. Hence everything which accords with the inclination of the will is good. And since good has no opposite other than evil, as Aristotle says, if the preservation of life is a good, the destruction of life must be an evil. There is a second proof. A natural inclination cannot be towards evil, because it comes from God, as St Thomas argues on the subject of the sin of the first angel, and the evil would then be imputed to God as the giver.

St Thomas' proof therefore holds good; there are three types of natural inclination,²⁰ and to act against them is evil, and a sin against the precepts of natural law.

Article 3: Is every act of virtue of natural law? AQUINAS REPLIES that *there are two ways of referring to acts as being 'of virtues':* the first, as the naked acts of virtues in themselves, which are not of natural law; the second, as in some way circumstantially virtuous, which are of natural law. There is nothing to remark here.

Article 4: Is natural law the same for all? AQUINAS REPLIES that as far as the truth of a matter is concerned natural law is common to all; but it is not equally recognized by all. But in a particular application the law is not always the same for all; it is not the same for sick and healthy men.

Article 5: Can natural law be changed? AQUINAS REPLIES that this can be understood in two ways, by *addition or subtraction*. Natural law can be changed by addition. As for subtraction, if that means removing some first principle, it is unchangeable; but things which are not first principles may well be changed. An example of this is polygamy, which is against natural law, but not recognized as such by all men. The purpose

20. The three types of *inclinationes* are defined by Aquinas as the instinct of self-preservation, which is shared by all substances; the instinct of procreation, which is shared by all animals; and the instincts of knowledge and sociable intercourse, which are shared by all rational beings.

of marriage is the procreation of children, and polygamy is not directly contrary to that purpose, though it is partly contrary since the procreation of children is not helped, indeed is somewhat hindered, by polygamy: two women will be better impregnated by two men than by one.

From this article it is clear that natural law consists not only of the first principles, but also of their consequences, so long as these can be recognized as proper inferences from the first principles.

§124 THE SECOND CONTRARY ARGUMENT in this article is that *the killing of an innocent man is against natural law, and so is adultery and theft*; and yet we find that God changed these rules (Gen. 22: 2; Exod. 12: 35; Hosea 1: 2).²¹ *Natural law, then, can be changed.* Aquinas replies that God is the Lord of life and death (1 Sam. 2: 6) and universal master of all things, and may thus give a woman, or even the wealth of the Egyptians, to anyone He chooses. About these dispensations many questions could be asked, but since Aquinas discusses whether there can be dispensation from natural law in *ST I-II. 100*, I shall deal with the matter there.²²

Article 6: Can natural law be abolished from the human heart? AQUINAS REPLIES with a distinction, concluding that the first principles cannot be abolished, but the secondary precepts which are like conclusions inferred from the first principles can. But I have already discussed above whether there can be a valid case of ignorance in natural law.

ST I-II. 95: On human law in itself

Article 1: Is it ever useful for men to make laws? AQUINAS REPLIES that it has always been not merely useful, but necessary.

Article 2: Is all positive human law derived from natural law? AQUINAS REPLIES that it is if it is just. At the end of the first paragraph of the body

21. The passages adduced by Aquinas refer to God's commands to Abraham to kill his son, to Israel to spoil the Egyptians, and to Hosea to take a wife of harlotry.

22. Vitoria's lecture on *ST I-II. 100* (not translated) discusses whether the precepts of the Old Law belong to natural law, and concludes with Aquinas that the moral precepts did belong to the law of nature, and hence continue in force, while the judicial and ceremonial precepts did not, and hence were superseded by the New Law (in *ST I-II. 100. 1*). Hence he argued against the *moderni* such as D'Ailly, Ockham, Gabriel Biel, Durandus de St-Pourçain, and Gregory of Rimini that the Ten Commandments are not dispensable even by God Himself (in *ST I-II. 100. 8*).

of the article, correct the word *expellendar*, which should read *expendas*.²³ Otherwise this article presents no difficulties of comprehension.

A DOUBT ARISES whether it would not be enough for all human law to derive from positive divine law? What need is there for it to derive from natural law? The reply to this is that even positive divine law itself is to a certain degree dependent on natural law, because God 'ordereth all things graciously' (Wisd. 8: 1). Hence there has never been a divine law which did not²⁴ have some reason in natural law, even though we need seek no other reason than the will of God. For instance, His commandment to refrain from eating pork is as much because pork is unhealthy as because of what the law signifies.²⁵

Article 4: Does Isidore correctly divide the types of human laws? AQUINAS CONTRADICTS what he says here in I-II. 100. 1, in I. 105. 3, II-II. 57, and *Summa contra gentiles* IV. 114. I shall return to all this below in 100. 1.

ST I-II. 96: On the power of human law

Article 1: Should human law be framed in general rather than particular terms? AQUINAS REPLIES that *law concerns the common good*, and its enactments should therefore be framed in general terms and so as to be permanent in the commonwealth.

Article 2: Is it the business of human law to restrain all vices? AQUINAS REPLIES that it is not; but take good note of his reason, which is not what many believe it to be. It is that since laws are framed for imperfect men, they should be such as imperfect men can keep. The reason given by some writers is that the laws take no cognizance of matters which do not disturb the peace of the commonwealth, such as fornication and so on.²⁶

Article 4: Does human law bind a man in conscience? THE QUESTION IS whether men are obliged to obey human laws under pain of mortal sin.

23. The passage of Aquinas reads: 'man can use the weapons of reason to rid himself of lust and savagery'; Vitoria prefers the reading 'to satisfy his lust and savagery', perhaps on the basis of Aristotle, *Politics* 1253^a31, to which Aquinas refers.

24. non om. MS.

25. There is no commentary on Article 3 'Does Isidore correctly describe the quality of positive law?'.
26. There is no commentary on Aquinas' next article (3 'Does human law prescribe acts of all virtues?').

Aquinas draws the conclusion that human laws *oblige in the court of conscience if they are just*, but not if they are unjust. The argument he uses is the authority of the apostle Peter: 'For this is thankworthy, if a man for conscience toward God endure grief, suffering wrongfully' (1 Pet. 2: 19).

NOW IN THE FIRST PLACE this question about obligation in conscience may be asked of civil laws, since this is a more doubtful case than that of papal laws. It seems that *they do not oblige in conscience*:

1. Otherwise it would follow that royal power was truly spiritual, like the power of the pope. This consequence is false, because the distinction between royal and pontifical power is precisely that the one is spiritual and the other not; yet the consequence is also necessary, because if royal law can bind souls it must necessarily have some purely spiritual effects.

2. The purpose of civil law is solely natural happiness, not supernatural happiness like that of papal law.

3. It is incredible that, if civil power cannot absolve from sin, it can oblige in respect of sin (*ad peccatum*).

4. It would follow that punishment would be inflicted twice on the same man for a single offence. This is evident: the king will punish me in the temporal sense, but I shall also be obliged in respect of a spiritual punishment.

5. No one may oblige with respect to an offence for which he is not empowered to administer the punishment; as, for instance, excommunication, which is a spiritual punishment.

6. Kings would then have the power to decide whether to make their laws binding in the court of conscience, or not, as prelates have the power to make purely penal laws such as the constitutions of our own order.²⁷ If kings do have this power, in what way is the pope superior to a king? Besides, even if they do, should not laws always be interpreted 'in their more lenient sense'? But if they do not, the whole argument is absurd, because the king is not empowered to decide whether laws are binding in conscience.

BUT ON THE OTHER HAND we have a proof of what is undoubtedly the true answer to this question in the words of the Apostle: 'Whosoever therefore resisteth the power resisteth the ordinance of God, and they that resist shall receive to themselves damnation' (Rom. 13: 2). And Peter says 'submit yourselves to every ordinance of man for the Lord's sake' (1 Pet. 2: 13); to which we add, 'not only for wrath, but also for conscience sake' (Rom. 13: 5). Nothing could be clearer.

27. Compare *On Civil Power* 3. 1, footnote 61-2, and the Glossary, s.v. obligation.

I REPLY that for the proof and clarification of this article, we must note that 'to oblige in the court of conscience (*in foro conscientiae*)' is not altogether the same as 'to oblige in respect of guilt (*ad culpam*)'. This is clear, because members of religious orders, even though they are not obliged *ad culpam* to obey their Rule, are obliged 'in the sight of God' (*apud Deum*), that is in the court of conscience; the proof being that if anyone were to say 'I refuse to obey the Rule' he would commit a sin, since disobedience is a mortal sin. But if they were not obliged in the court of conscience, there could be no sin in saying 'I disdain to keep the Carthusian Rule' or whatever. Therefore those who claim that such Rules do not oblige in the court of conscience are wrong. And civil laws oblige not only in this way, but also *ad culpam*.

- §125 [ST I-II. 96, Article 4 cont.] This is clear, but to explain it still further we must remark what Aquinas said in an earlier question, that the rationale of sin is based on the scale of goodness and malice, since the measure of merit or demerit of a thing is its goodness or badness.²⁸ First of all, therefore, the effect of divine law is to make something previously of itself indifferent either good or bad. It is lawful to eat meat on this day of the week, but it would become evil were a divine law to prohibit it. Conversely, circumcision was indifferent until the law made it good. Second, divine and human law differ only in their authors; the first is from God alone, the second from God and man. Therefore each is as binding as the other; God is no less the cause of a law produced through secondary causes than He is of those which He produces by Himself immediately. And as the first effect²⁹ of divine law is to make a thing either good or bad, so the first effect of human law is to establish a thing as essentially good or bad (*in esse uitii uel uirtutis*). Before it was prohibited, eating meat on Fridays was good; now it is bad. I take it as certain, therefore, that civil laws oblige in respect of guilt (*ad culpam*).

IN RESPECT OF ecclesiastical laws and whether they are binding in respect of guilt, there is no controversy among Catholic writers. But Luther denies that they are binding. The testimonies against him are innumerable: 'if he neglect to hear the church, let him be unto thee as an heathen man' (Matt. 18: 17), and so on. And they refer not only to fraternal correction, but to all the precepts of the Church. As for the verse 'he that heareth you heareth me' (Luke 10: 16), the heretics explain it as meaning 'when they preach the law', but this is to twist the

28. Compare ST I-II. 21. 1-4.

29. effectus : affectus MS.

words. Likewise 'whatsoever thou shalt bind on earth shall be bound in heaven' (Matt. 16: 19), and 'the scribes and the Pharisees sit in Moses' seat, all therefore whatsoever they bid you observe, that observe and do' (Matt. 23: 2–3); and again, 'Obey them that have the rule over you, and submit yourselves' (Heb. 13: 17), and 'ye know what commandments we gave you by the Lord Jesus' (1 Thess. 4: 2). Again, it is written that 'it seemed good to the Holy Ghost and to us to lay upon you no greater burden than these necessary things' (Acts 15: 28); but since the prohibition against eating 'things strangled' (*ibid.* 29) is nowhere prescribed in divine law, this must have been a human law. Likewise it is written: 'the man that will do presumptuously, and will not hearken unto the priest, even that man shall die' (Deut. 17: 12); this does not mean 'in matters concerning the commandments of the Law', but in other matters too. In Deut. 21: 18–21 it is commanded that a stubborn and rebellious son should be stoned to death for not obeying his parents; so much the more, then, may spiritual parents compel obedience, if disobedience to natural parents was considered a mortal offence.

For these and many other reasons, we must take it as a matter of faith that the laws of the Church oblige in respect of guilt (*ad culpam*). See Josse Clichthove, *Antilutherus* 10–11, who says that Christ speaks through the Gospel as if He were giving us commands face to face, in His living voice; and He said 'Obey them that have the rule over you, and submit yourselves' (Heb. 13: 17). There is no difference between divine and human law as far as this question of obligation is concerned.

A DOUBT ARISES whether the obligation involved is in respect of pain of mortal or venial sin. Jean Gerson defends the proposition that human laws, whether civil or ecclesiastical, cannot in themselves oblige in respect of mortal sin (*De vita spirituali animae* 4). His reason is that mortal sin differs from venial sin only according to culpability, depending on whether the culprit deserves eternal or merely temporary punishment. But human legislators cannot oblige in respect of eternal punishment because they do not have the means to enforce such a punishment, just as a king cannot oblige on pain of excommunication. Hence Gerson concludes that human laws do not oblige in respect of mortal sin, except in cases of contempt (*ex contemptu*).³⁰ To the contrary argument, that a man who fails to make his confession once in a year is surely committing a mortal sin, Gerson replies that such a man does sometimes commit a mortal sin, but this is not so on the basis of the human laws concerned, but rather on the basis of divine law. The source

30. For the exception, compare the wording of the Dominican Rule, 'non obligant nos ad culpam sed ad poenam, nisi propter preceptum uel contemptum'.

of the distinction is that human law is *explanatory* rather than *obligatory*. In other words, if a doctor instructs me that I shall die if I eat fish, and I eat the fish and die, my sin will not be that I contravened the doctor's instructions (he was not empowered to *instruct* me), but that he *explained* to me a natural law, and by this I was obliged to avoid suicide. In the same way, ecclesiastical law orders us to make confession, but this is just a way of explaining a divine law.

For myself, I am not sure that Gerson's argument takes us much further than what others have said. Durandus of St-Pourçain seems to hold the same opinion in his treatise *De origine iurisdictionis*; and many canonists also hold the opinion that human laws only oblige in respect to mortal sin in case of contempt (*ex contemptu*). This is the view of Cardinal Zabarella on X. 3. 46. 1, and of Angelo Carletti da Chivasso, *Summa Angelica*, who adds 'from contempt or custom', and cites Bernard's *De praecepto et dispensatione* (though I believe that St Bernard was speaking of something else). The *Summa Angelica* also cites Richard, *Quodlibet* 1. 19.³¹

The common opinion of theologians, however, is that human laws can oblige in respect of mortal sin in their own capacity. This is what St Thomas says in his commentary on Lombard's *Sentences* IV. 15, and in ST II-II. 158; so do Nicolaus de Tudeschis, Guido de Baysio, and many other canonists. This, then, is the opinion to follow. The proposition is proved by the authority of Paul's saying, 'they that resist shall receive to themselves damnation . . . render therefore to all their dues, tribute to whom tribute is due', and so on (Rom. 13: 2, 7). Second, excommunication belongs to positive law, and yet we are obliged to avoid communion with the excommunicated under pain of mortal sin, as stated in the decretal *Sacris est canonibus* (X. 1. 40. 5). A further argument is that some laws oblige on pain of death, and, as Cajetan points out, there can be no capital punishment for venial offences. Another proof is that Acts 15 talks of the Holy Ghost laying upon us 'no greater burden than these necessary things' (Acts 15: 28), where the word 'necessary' cannot refer to obligations merely venial. Likewise, if the Old Testament prohibits disobedience to a priest or to parents under pain of death (Deut. 17: 12; 21: 18-21), so much the more will the commandments of the New Testament oblige in respect of mortal sin.

However, Almain says in his treatise *De potestate ecclesiastica* that this is true only of ecclesiastical law, not civil. This is in fact false, because civil law is equally divine in origin: 'there is no power but of

31. The author cited by Vitoria simply as 'Richard' is difficult to identify: possibly Richard of Middleton.

God' (Rom. 13: 1), and 'submit yourselves to every ordinance of man for the Lord's sake' (1 Pet. 2: 13). The government of the commonwealth is necessary, and has been committed by God to secular princes.

BUT GRANTING that both human and divine laws oblige equally, nevertheless not all laws, be they civil or ecclesiastical, always bind in respect of mortal sin. Hence the doubt arises, when they oblige in respect of mortal, and when in respect of venial sin? As far as this is concerned, it seems that we must make a distinction between the legislators of each type of law, since obligation, whether in respect of mortal or venial sin, appears to depend on the intention of the legislator. The argument might run as follows: 'How is it', you ask, 'that not all laws oblige in respect of mortal sin?' I explain that this depends on the intention and declaration of the legislator; he may carry laws which are not binding in respect of any guilt. This is one way of answering. But again you ask: 'How am I to know when this is his intention?' Now the teacher's reply to this is that there are certain formulae which allow us to conjecture, such as commandments made 'on pain of excommunication' or 'in virtue of the Holy Spirit and holy obedience'; these are clues that the obligation is in respect of mortal sin. When such phrases are missing, however, then the commandments are simple mandates, with merely venial obligation.

But in the case of civil laws, such clues are impossible; the prince does not have the Church's power to oblige, nor to declare when he is obliging in respect of one sort or the other. My view, therefore, is that obligation in respect of mortal or venial sin does not depend on the legislator's intention. The proof is that, if it did, the intention of the legislator would also have to be the governing factor in just *how* mortal or venial any sin was. For example, suppose there are two commandments: first, that failure to attend mass is a mortal sin, and second, that failure to keep a fast is also mortal, but more serious than the first. Now what is the origin of this extra seriousness? It cannot be the intention of the legislator, because even if he had wished it so, he did not have the authority. Neither, in that case, can the mortal obligation depend on the legislator's intention.

Let us try another argument. Suppose there is no difference between human and divine law; how do you know that fornication is a mortal sin, while a lie told in jest or an idle word is merely venial? Surely it depends on the nature of the case, on the object itself. Aquinas has explained the rules for deciding when a sin is mortal or venial in an earlier passage: if it is against charity to God or one's neighbour it is mortal, otherwise it is venial (I-II. 88. 2). I assert, therefore, that this question depends on the material nature of the sin; there is no other

means of judging. If a human law concerns a serious matter, transgression will be a mortal sin; if it concerns a trivial matter, the sin will be venial. Not even the pope can *cause* a law about a trivial matter to be binding in respect of mortal sin. All he can do is *explain* when a law is binding in respect of mortal sin – that is, when the matter concerned is serious – as when it obliges ‘under pain of excommunication’, or ‘in virtue of the Holy Spirit’, or ‘under pain of eternal damnation’. And the same is true of civil laws. Obligation in respect of mortal or venial sin does not and cannot depend on the king’s intention; it is the nature of the thing concerned that must be considered. That people should not own mules is no very serious matter, and so a transgression is perhaps only a venial sin. But in other cases the civil law may oblige in respect of mortal sin, and the king may also explain that the matter is serious, so that if he threatens any failure to pay alcabalas (*gabellae*) with capital punishment, this crime becomes a mortal sin because it is against charity to one’s neighbour (assuming the law is justly imposed).

A LAST DOUBT ARISES whether purely penal laws, that is laws which specify some fixed penalty such as a fine of one hundred pieces of gold for cutting wood on a common, are binding in respect of guilt. Henry of Ghent replies that occasionally a penal statute will contain both a commandment and a penalty, in a formula such as ‘We order, and the transgressor shall pay, etc.’; and sometimes only a penalty. The first kind obliges in respect of guilt, the second does not (*Quodlibet* 3. 22). In this he is followed by Angelo Carletti da Chivasso. But Silvestro Mazzolini da Priero and the other summists and canonists commonly hold that such laws always oblige in conscience. And their opinion is the better, because since laws impose penalties for the purpose of prohibiting, they impose necessary obedience. It is a different matter with voluntary obligations.

Cajetan raises a further question, whether someone can be obliged by a law even under threat of death? From the chapter already cited from the decretal *Sacris est canonibus* (X. 1. 40. 5) it seems they can. Cajetan remarks that, in itself, obligation is unaffected by the threat of death, but it may be relaxed by favour of the legislator. But I believe, humbly begging Cajetan’s pardon, that this question has nothing to do with the legislator’s goodheartedness; it depends, as I have said, on the nature of the law and of the matter concerned. Sometimes obligation will obtain despite the threat of death, sometimes not, depending on the gravity or levity of the matter.

What is meant by the proviso concerning provocation is discussed in the same decretal *Sacris est canonibus* (X. 1. 40. 5), where all the commentators have something to say, and by Aquinas in his *Quodlibets*.

§126 **Article 5: Is everybody subject to the law?** The *Sed contra* is Paul's saying 'Let every soul be subject unto the higher powers' (Rom. 13: 1). Aquinas replies with a distinction and draws the corresponding conclusions. The question, then, can be understood in two ways: first, insofar as law has guiding force (*uis directiua*), and in this respect all are subject; second, insofar as law has coercive force (*uis coactiua*), and in this respect not all are subject. In the first case there can be two reasons why a person is excepted: first because he is not a subject, and second because he enjoys dispensation from a higher power. In the second, those who are truly upright are not properly speaking *coerced* by the law, since they keep it not from fear of punishment but out of love of righteousness.

A DOUBT ARISES whether visitors from other kingdoms are bound by our laws. The reply is that denizens are undoubtedly bound, since the king has power to pass laws concerning denizens. If the French were permitted to live in Spain according to their own whim, the commonwealth would have no proper means of governing them; but the commonwealth is self-sufficient (*perfecta*) and has no need of laws other than its own. The proof is that if denizens were not bound by our laws they would be altogether exempt from any law, since when they travel abroad they cease to enjoy or be bound by their own laws. It would be a crime if they were to smuggle money out of the kingdom. But if they were to ride upon a mule once, they would not immediately be deported.

A FURTHER DOUBT ARISES whether or not³² the clergy are subject to civil laws. The reply is that the jurisconsults make a distinction between two types of civil law: one which applies only to the clergy, and churchmen are not bound by this type unless they are for the benefit of the clergy, since a privilege extends even to those who are exempt. The other type is of laws common to all, which concern the benefit of all; and this type are undoubtedly binding on all churchmen, including those in religious orders. Thus laws such as those against wearing clothes of pure silk or carrying offensive weapons are certainly binding in conscience, unless it is a law in some way enacted out of hatred for the clergy. This is the case if all things are equal; but if there was a law which absolutely forbade riding on a mule, the clergy would not be bound by it, since it is improper for them to ride on horses.

Aquinas' replies to the arguments are worth remarking. With respect to the reply to the third,³³ a doubt arises whether the pope is obliged to

32. an non : nunc MS.

33. In the reply *ad tertium*, Aquinas discusses the celebrated principle *Princeps legibus solutus* (see the Glossary, s.v.).

keep his own laws about fasting, reciting the canonical Hours, hearing mass, and so on; and the same question applies to secular princes. He replies that a legislator cannot be obliged by any coercive force (*uis coactiua*) nor punished by any superior for a transgression, the reason being that properly speaking 'no one can be compelled by himself' (*Digest* IV. 8. 51); but as far as its guiding force (*uis directiua*) is concerned, all are bound, including the legislators, so that they commit a sin by breaking the laws. So the pope sins if he does not fast when I fast, or fails to say his Hours. Nevertheless, *he may grant dispensations according to the place and season*, with regard both to himself and to others.

A DOUBT REMAINS as to what is meant by the prince being 'subject to the guiding force (*uis directiua*) of the law, but not to its coercive force (*uis coactiua*)':

1. Either he sins, or he does not. If not, then he is exempt from both forces. If he does sin, is that not compulsion, and moreover compulsion under pain of Hell, which is greater than a merely temporal punishment? And hence he must also be coerced under pain of temporal punishment.

2. Another argument against this runs as follows. The king is no more subject to his own law than to the just guidance of the laws of others. But neither he nor we are bound by these latter. *Ergo*, etc.

3. Again, the king is as exempt from his own law as he is from his own authority. But he cannot be subject to himself. *Ergo*, etc.

4. Again, by whom is the king obliged? Not immediately by God, nor by himself, nor by the commonwealth; *ergo* by no one.

5. Again, he cannot be deprived of his liberty by law.

6. Again, there is an evident contradiction when Aquinas says the king is subject to the law of *his own will*. What if he does not wish to be subject?³⁴

I REPLY, in the first place, that although the prince is over the whole commonwealth he is nevertheless part of the commonwealth. It is not as if the king of France made laws for us. Second, we may remark that it is of the essence of natural law that the burdens of the commonwealth should be distributed proportionately among all its members. From these two propositions follows a third: namely, that in natural law the king must undertake his share of the burdens which concern the whole commonwealth if he is to receive his share of the benefits. Moreover, the consequence of this is that the king has to undertake his share in all

34. This *obiectum* alludes to Accursius' standard resolution of the conundrum (see the Glossary, s.v. *Princeps legibus solutus*).

things, other things being equal. It is not just, therefore, for the pope to be bound by a law which applies only to the estate of subjects; the obligation to hear mass applies as much to the pope as it does to me. If a bishop establishes a feast-day, he himself is obliged to hear mass on that day as much as anyone else. If the pope declares a fast, he too is bound to fast. From all this it emerges that he acts against natural law if he is not subject to those of his own laws which concern the whole commonwealth, other things being equal. He is therefore subject to the guiding force (*vis directiva*) of the law whenever this applies to him as to others. But if the king enacts laws against the wearing of silk or cloth of gold, he himself may still wear them since in this matter all things are not equal.

YET A DOUBT STILL ARISES whether, even if this is so, a king sins equally as others do? It would be a mortal sin for me not to fast or hear mass; but would it be a mortal sin for the pope? My reply is that I believe he does not sin equally. Although on other grounds his sin may be more serious, because he commits an offence against his subjects by burdening them with laws which he is unwilling to raise a finger to obey himself, all the same in the force of law his sin is not equal, because he compensates for it by holding other and greater burdens in the interests of the commonwealth. If someone has a special licence from the pope releasing him for no good cause from the obligation to fast, he commits a sin if he fails to fast; not in the force of law, because he has an exemption, but because he breaks natural law. But his sin is not as grave as it would otherwise be, because the offence [against natural law] is not so grave [as the offence against positive divine law]; the crime might in this case be merely venial.

A FINAL DOUBT ARISES whether a prince, if he can make dispensations and exceptions to a law, can also choose whether to impose or remove the burdens on others. The reply is that he does wrong to give dispensations without reasonable cause, in regard to himself or to others.

Article 6: May one subject to a law rightly act against its letter? AQUINAS REPLIES with three or four conclusions. First, *if a case of necessity crops up*, where literal observance of the law would be manifestly contrary to its intention, then the intention, not the letter, should be fulfilled. But *it is not for anybody to construe the law*; the bishop³⁵ should

35. Vitoria uses the word *episcopus*, whereas Aquinas says *principes qui propter huiusmodi casus habent auctoritatem in legibus dispensandi* ('the princes who have the power to grant dispensations in this kind of exceptional case'). It is unclear whether Vitoria is knowingly insinuating a special claim for the spiritual prelacy into Aquinas' argument, or simply using the word *episcopus* in its broader original meaning of 'overseer'.

be consulted, *if recourse can be had to him*, but otherwise anybody may give the dispensation.

A DOUBT ARISES as to what this means. Is it so only when there is a reasonable cause for dispensation in human law, and it is certain that if the legislator were present he would grant dispensation? I am not talking of a case of strict necessity, since then the law may be ignored even without dispensation, but for instance of a case where we were besieged by an enemy and had a shortage of Lenten foods; would it be lawful to eat meat on Friday or Wednesday? I reply with an absolute negative. This is also clear: marriage to a woman related to us within the prohibited degrees of consanguinity is unlawful without proper dispensation. But it is nevertheless true that if a case occurred where the legislator's contrary intention could be firmly established, and he in no way wished me to keep the law, I would be free of any obligation, and might break the law without scruple. This is so, for example, with members of certain religious orders who have rules to this effect.³⁶

A FURTHER DOUBT ARISES whether the binding force of a law ceases when the reason for the law ceases. Does a law prohibiting the carrying of arms during a period of public unrest (*factiones*) cease to be binding when the riots have ceased? The reply is that the reason for a law can cease in two ways. First, it may cease privately with regard to a particular person; for example, if I know that even if I carry arms absolutely no danger will ensue. Again, gambling is prohibited because it provokes blasphemy; I and my partner shall never blaspheme; are we permitted to play dice? The answer is absolutely negative in cases like these where the inapplicability of the reason for the law is purely personal. Similarly, even if the rebelliousness of my flesh is more excited by the taste of fish than of meat, it is not in any way lawful for me to eat meat.

On the other hand, if the cause of the law ceases generally, I may break the law without any scruple (as in the case mentioned above, if the riots cease). This is clear, because the law has become useless and is no longer for the common good, as it was before.

ST I-II. 97: On changing the laws

§127 Article 1: May human law be altered in any way? AQUINAS REPLIES that it may, and assigns two causes. All this is clear.

36. Vitoria refers once again to the 'purely penal' constitutions of the Dominican rule (see the Glossary, s.v. obligation).

A DOUBT ARISES concerning the second cause, namely *because the recipients of the law have changed*, whether the fact that a law is no longer kept is a sufficient reason to change it, even though it is still beneficial to the commonwealth? For example, the law about fasting in Lent is very useful, and yet it is so little observed that one may ask whether it would be lawful to change it, on the grounds that its existence achieves nothing but causes sin. I remember being present at the trial of a parallel case about some law of a certain religious order, and one of the learned Fathers judging the case answered that it would not be good to change the law 'because God does not change His laws simply on the grounds that they are not observed'. The reply is that if such a law is universally ignored, however holy and good it may be, and if there is no hope that it will be observed in the future, it may be abrogated. But if the reason for its neglect is the negligence of the prelates, it should not be annulled; instead, pains should be taken to ensure that it is kept. The same holds true if the law is kept only by a very few; it should be annulled if there is no hope of its being kept, the yardstick being popular assent and common utility.

Article 2: Should a human law always be altered when an improvement is available? AQUINAS REPLIES with two propositions. First, for a law to be changed it is not sufficient that some improvement should crop up, because *custom helps greatly to ensure the observance of law*. Some people used to suggest, for instance, that it would be better to substitute Lent by four periods of penance distributed through the seasons of the year. If this matter were now being instituted for the first time, it might be better so; as it is, custom has made the present arrangement best. His second proposition is that human laws cannot remain fixed in the same way as divine laws. *If a law contains a manifest injustice, it should be altered*.

A DOUBT ARISES whether the legislator has the power to change a law even when there is no reasonable cause for change? Could the pope abolish Lent without reasonable cause, or a king his civil laws? It seems he cannot:

1. A king has power to build but not to destroy; hence he cannot draft a law unless it is useful to the common good, and he cannot abolish a good institution like a useful law. Likewise with the pope: if he were to draft a useless law it would be invalid, as for instance if he were to prohibit marriage within the tenth degree of consanguinity. Nor, therefore, can he wilfully abolish a law.

2. The confirmation is that, as I have said in the previous question (§126, in I-II, 96. 5 *ad fin.*), a prince cannot grant anyone a dispensation

without reasonable cause. But to abolish a law, which is to exempt everyone, is even more serious than exempting a single person.

3. And this is confirmed, because even if the pope were to exempt Spaniards from the law of fasting, they would do evil if they did not fast, and would not be safe in conscience.

I REPLY to this that if a legislator abrogates his law, it no longer exists or has any force, no matter how unreasonable his motive. To suppose that a council can tie the hands of the pope and prevent him from changing his own law is both wrong-headed and heretical. A prince can abrogate his laws at his pleasure – even, indeed, if he sins by doing so.

TO THE FIRST it may be true that a king has no power to break, but he may abolish an obligation of which he is himself the author. So too the commonwealth in concert with the king may abrogate any law whatever.

TO THE SECOND, as to whether anyone who broke a law which had been abrogated without due reason would commit a sin, I reply that he would not – not even a venial one.

TO THE THIRD, that 'if the pope were to exempt the Spaniards they would not be safe in conscience' and so on, I deny the consequence. When only a few are exempt, they cause offence to the remainder by natural law; but when all are exempted, no one is offended.

Article 3: Can custom obtain the force of law? AQUINAS REPLIES that it can, and explains that a legislator can manifest his will not only in words, but also in deeds. If he prevaricates in punishing transgressors, the law is repealed by custom.

A DOUBT ARISES whether custom alone, without a law to support it, can be binding in conscience? In reply let us make the following proposition: no custom can be binding, either in the court of conscience or in the court of law, except by the express authority of the superior power. From this follows a corollary: however widespread a custom may be, if some origin for it cannot be established in the will of the legislator, it is not binding, assuming this provokes no disorder. A third proposition: custom may be a sign of the intention and will of the legislator, and consequently have the force of law. But it is not a sufficient sign that the legislator does not prevent men from following the custom, since if the thing is good to do, the legislator has no business to prohibit it. A sufficient sign is when experts judge that it is obligatory.³⁷ In doubtful cases it is always to be assumed that custom is not binding, because

37. *quod obligat : quod non obligat MS.*

these bones of contention must always be kept at bay. It becomes a sign that a custom is binding when its transgressors are punished.

TO THE CONTRARY ARGUMENT, whether custom can remove obligation (that is, abolish a law), the reply is the same. Indeed, custom is more able to remove than impose obligation. It is not to be supposed that the pontiff's failure to punish the uniquely Spanish custom of eating offal and forcemeats on the Sabbath was due simply to negligence. In the decretal *Cum tanto* (X. 1. 4. 11) it is expressly stated that all long-established customs which run counter to human laws have the effect of annulling the latter, because the authority of age-old custom is not to be despised.

But what if a particular law contains the clause 'notwithstanding any contrary custom'? Can such a law, since it also is a human enactment, be abrogated by custom? The doctors assert that when an enactment contains this kind of invalidating rider (*decretum irritans*) against attrition by custom, it remains always in force unless some new situation supervenes. So constitutions of religious orders with a rider invalidating contrary custom (*cum decreto irritante consuetudinem contrariam*) are permanently valid.

If a custom is wrong to begin with, can it be binding? I reply, first, that if a law is accepted by no one when it is promulgated, it is repealed, not only by contrary custom but because from the very beginning it has been considered useless and invalid. But if the majority accept it, those who fail to observe it commit a sin. I add that even if the law were on pain of excommunication, if it failed to find acceptance it would not be binding, if the pope prevaricated in punishing transgressors. But once the law has been accepted, any who begin the habit of disregarding it do wrong. Nevertheless, if the legislators prevaricate in punishing these transgressors, the custom may become so prevalent that it ends by rightly causing the repeal of the law.

Article 4: May the rulers of the multitude grant dispensations in matters of human law? AQUINAS REPLIES in his first conclusion that prelates and rulers may grant dispensations *for cases and persons* [where the law is wanting]; and in his second, that they would do wrong to grant dispensations without cause.

A DOUBT ARISES as to what 'dispensation' means: does it merely consist in declaring that the law does not hold in a particular case?

1. If the pope dispenses a man from a simple vow, for example to make a pilgrimage to Jerusalem, many say that what he does is declare (*declarar*) that the vow is not binding in this particular case, for instance because the man has a wife and children and so on. But this is

'declaration' in a different sense from a theologian's explanation, which seeks to clarify by academic discourse (*docendo declarare*) how the vow is contrary to charity or whatever. The words of Aquinas seem to favour this latter kind of explanation; but in matters which depend on divine law such as oaths, many authorities say that the pope can only 'declare', not 'dispense' (*declarare, non dispensare*). And a few extend this argument, that he only declares and cannot grant any other kind of dispensation, to positive law as well.

BUT ON THE OTHER HAND properly speaking 'to dispense' is not 'to make a declaration' but to create something new. Second, I say that 'to dispense' means to remove obligation and annul the law by which someone was previously bound.

IN REPLY let us come now to the reasoning which led the doctors to say that the pope 'merely declares'. They argue that either the reason for the law is still valid at the time, or not. If it is, he clearly cannot grant dispensation; if not, the person was not bound by it in the first place; *ergo*. Now in replying to this, we note what I said in yesterday's lecture, that if the reason for a law ceases with regard to that particular person, he is not exempted from the law; this only happens when the reason for the law ceases with regard to all (§126, in I-II. 96. 6 *ad fin.*).

TO THE FIRST let us take it, therefore, that the reason for the law is lacking in his particular case. I deny the inference that he was not bound by the law; this deduction is false, because the reason for the law has not ceased universally with regard to all, but only with regard to him. The pope may therefore grant him dispensation with reasonable cause, not because he was not bound by the law, but because the pope absolves him from that obligation. There is an infallible proof. The head of a family may quash a true, legitimate, and binding vow made by his sons. He does not 'declare', because he can quash even without cause, without sin, because this is his right. But this authority which parents have over their children is not from divine or natural law; they have it only from the Church, which also has the power to take the authority away from them, even wrongfully. Therefore the Church possesses the power not only to make a verbal declaration (*declarandi*), but also to dispense (*dispensandi*). And the confirmation is that such a power is greatly useful; without it, many untoward things would ensue.

A DOUBT ARISES also about the second conclusion. Reasonable cause is required for dispensation from matters which depend on divine law.

What of matters which are purely dependent on human law? I do not affirm that the pope cannot grant dispensation in these cases [without reasonable cause], but I certainly affirm that it is not lawful to do so. The doubt is therefore whether a man who has in fact been thus dispensed without reasonable cause is safe in conscience and able to take advantage of the dispensation.

The reply is that if the matter depends on divine law, or belongs to natural law, he cannot take advantage of a dispensation gained in this manner – although many close their eyes to the fact, the pope does occasionally act without reasonable cause. But in matters of human law, any obligation in positive law is altogether removed, though any obligation in natural law remains in force, as I said yesterday, because they are relieved of their share of the common burden and thus offend those who remain burdened. All the same, they are not to be judged as committing mortal sin, since the offence is small, unless they happen to be great magnates, in which case they would cause great scandal by eating meat on Fridays and such like.

§128 [ST I-II. 97, Article 4 cont.] TO CONTINUE the discussion, I was in the middle of debating whether the ruler of a community can grant dispensations in law, and whether a dispensation made without reasonable cause is binding. I had covered the point that if the matter was to do with divine law, such a dispensation was invalid without reasonable cause.

A DOUBT ARISES as to what can be called a 'reasonable cause'. If a man has vowed to go on a pilgrimage to Jerusalem, can it be called a reasonable cause when it would be better to break the vow than to keep it?

The reply is that it cannot, because he might perhaps not take advantage of a dispensation for this reason. By this I mean that this is not a necessary, though it is clearly a sufficient, cause. But another cause might be that he had not properly considered the vow, but made it precipitately and without due deliberation; he might have made the vow in childhood or adolescence. Again, if he took the vows of religion under fear of death, he would be bound by them, but this would be a sufficient cause for dispensation on the grounds of the conditions under which the vow was taken (*ex conditione uoti*). Another cause can be the nature of the vow itself (*ex parte uoti*), for instance if it is too difficult or dangerous to keep, like a man who has vowed not to gamble and runs the risk of breach of contract (*fractio*). And there is one further sort of cause: assuming it was made under binding conditions, and is free of danger, it can nevertheless be dispensed by reason of a conflicting and equally pious vow (*ratione alterius uoti*). Bulls of indulgence contain a clause to

the effect that dispensation is granted 'for the help given towards their expedition, not only for payment', because the former is better, and hence ought to grant more than was granted for the indulgence itself if we take account of equity. The bull ought not to give dispensation from a vow of fasting for a whole year merely on payment of a single piece of silver, particularly when the vows themselves were holy, considered, and not thoughtless. I should say the same of oaths; and in any other circumstances, I should fear for the validity of the dispensation.

It is also asked whether a sufficient cause for dispensation is the fact that the man who has taken the vow is unwilling to keep it even under threat of damnation? I reply that it is not sufficient, since this cause is present in all dispensations. If this alone was sufficient, it would be a waste of time for the doctors to continue debating what other causes were sufficient! But in cases which depend on positive law, I admit that prelates may – I do not say 'should' – grant dispensation without reasonable cause. Those dispensed in this manner are secure at least as far as the law is concerned, at least if they are private individuals. But those who give such dispensations commit a mortal sin.

ST I-II. 98: On the Old Law

Article 1: Whether the Old Law was good. AQUINAS REPLIES that it was, because it was *in conformity to right reason* and wisely made, and *forbade all sins which are contrary to reason*. But his second conclusion is that it was not perfectly good, because it was not sufficient to obtain the end for which it was ordained.

A DOUBT ARISES what the question means? The reply is that to ask 'whether the Old Law was good' means to ask whether it forbade bad acts and enjoined good ones. This question is raised on account of the Manichaeans who would not accept the Old Law because they said it was bad, prohibiting good things and enjoining bad ones:

1. IT SEEMS it was bad because it condoned evils such as usury (Deut. 24: 20; 28: 12); *ergo*.³⁸ Also it condoned divorce (Deut. 24: 1), which appears to be against natural law (ST Suppl. 67. 1) and is condemned as evil by the Lord in the Gospel: 'Moses because of the hardness of your hearts suffered you to put away your wives' (Matt. 19: 8).

The reply to this is given by the commentators on Lombard's *Sentences* IV, who point out that usury was not lawful, but permitted only with

38. Compare ST II-II. 78. 1.

strangers; the prophet David stresses that 'he that putteth not out his money to usury shall never be moved' (Ps. 15: 5). On divorce, however, some commentators say that it was lawful, and that they could marry a second wife; others say it was not lawful, but permitted.

2. A SECOND PROOF that it was bad is that it clearly condoned hatred against one's enemies: 'ye have heard that it hath been said by them of old time, Thou shalt love thy neighbour and hate thine enemy' (Matt. 5: 43). And the proof that the Lord meant by this that it was written in the Old Law is that he says in the same Sermon on the Mount: 'Ye have heard that it was said, Thou shalt not commit adultery' (Matt. 5: 27), and this was one of the commandments in the Old Testament; *ergo*.

The answer is that this is the work of grammar-divines (*grammatheologi*)³⁹ like Jacques Lefèvre d'Étaples in his *Commentary on Matthew*, who advances the claim (never have I seen such ignorance or effrontery) that the Old Law wholeheartedly condoned, indeed commanded, hatred against one's enemies; that because of this even holy men like David hated their enemies ('Reward evil unto mine enemies, cut them off in thy truth', Ps. 54: 5); and that it was the New Law which revoked this precept. The answer is that the Old Law neither prescribed nor permitted any such thing: 'if thine enemy be hungry give him bread to eat, and if he be thirsty give him water to drink' (Prov. 25: 21). And: 'if I have rewarded evil unto him that was at peace with me, let the enemy persecute my soul, and take it' (Ps. 7: 4–5). In his exposition of Psalm 78 St Augustine comments on the passages of the Psalms adduced by Lefèvre d'Étaples and similar passages that they are prophecies, not wishes; when the psalm said of Christ 'gird thy sword upon thy thigh, O most mighty' (Ps. 45: 3), and 'scatter thou the people that delight in war' (Ps. 68: 30), it did not will these things, but prophesied them. The New Law did not mend the Old, as Lefèvre d'Étaples thinks, since Christ said: 'Think not that I am come to destroy the law' (Matt. 5: 17). Augustine wrote in his epistle to Marcellinus, who thought that Christ had revoked the Old Law because it was evil, that it was not revoked but 'dissolved' by being made useless. As for the passage 'Ye have heard that it was said by them of old time, Thou shalt hate thine enemy' (Matt. 5: 43), I reply that the Lord never meant this was 'written in the Law', but that it was 'said by your fathers and forefathers', as if to say they misunderstood the law. Clearly He did not mean 'written in the Law' because in the same passage He said 'Ye have heard that it was said, Thou shalt not

39. Vitoria was fond of coining these contemptuous names for the *nouvi grammatici*. On his attitude to the humanists, see the Introduction, p. xiv; the following reference to Lefèvre d'Étaples shows that 'Christian humanist' Biblical critics are meant.

commit adultery; but I say unto you, that whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart' (Matt. 5: 27-8), yet the precept in the Old Law said 'thou shalt not covet thy neighbour's wife, nor his ox, nor his ass' (Exod. 20: 17).

A DOUBT ARISES whether, if the Old Law is good, it is still binding to observe it even today, provided it prohibits nothing good and prescribes nothing bad? After all, Christ revoked nothing good. But against this the Apostle says: 'if he be circumcised, Christ shall profit you nothing' (Gal. 5: 2). The reply is that the precepts of the Old Law worked in three ways, some judicial, some moral, some ceremonial. I say that it is lawful not to observe⁴⁰ the first type, and those of third type which do not signify the future coming of Christ like incense or candles.

A FURTHER DOUBT ARISES whether actions under the Old Law earned merit. The reply is that they did. Note Aquinas' solutions to the three arguments, which are full of egregious points.

Article 2: Did the Old Law come from God? THE ARGUMENT AGAINST is the Lord's saying: 'Thus have ye made the commandment of God of none effect by your tradition' (Matt. 15: 6). Aquinas replies that it came not merely from God, but from the good God, contrary to the belief of the Manichaeans who say it came from evil.

Article 3: Was the Old Law given through angels? AQUINAS REPLIES that it was, and that Moses made no commandment except by God's special mandate. To deny this is heretical. It is written: 'And he took the book of the covenant, and read in the audience of the people; and they said, All that the Lord hath said will we do, and be obedient'; and immediately afterwards, 'Behold the blood of the covenant, which the Lord hath made with you concerning all these words' (Exod. 24: 7-8). These self-same words of Moses are repeated by Paul: 'This is the blood of the testament which God hath enjoined unto you' (Heb. 9: 20).

A DOUBT ARISES as to how the angel spoke to Moses. Did it assume some bodily form? The reply is that we do not know; but the common opinion is that it shaped a voice of air, without assuming a material body. In the reply to the second, the argument is that the Lord spoke to him 'face to face' (Exod. 33: 11) meaning 'as one friend to another'. But the doctors are undecided whether this means that Moses saw the very essence of God clearly. Some say he did, but the majority, amongst them Augustine (*De Genesi ad litteram* 12. 27; though elsewhere he seems to waver on this point), that 'face to face' means 'familiarily'.

40. licet non servare : licet modo servare MS.

Article 4: Should the Old Law have been given to the Jewish people alone? AQUINAS REPLIES that it should, for two reasons, the chief being that He chose them as the people from which the Messiah should be born. The reason for this choice was simply the grace and will of God.

Article 5: Are all men obliged to keep the Old Law? AQUINAS REPLIES *no*, and proves that only the family of Abraham are bound by it.

A DOUBT ARISES in connexion with the third argument: could strangers lawfully be admitted to the Old Law? Aquinas replies that they could, if they were willing to keep it. But a further doubt is whether heathens could lawfully accept part of the law while dismissing the rest; that is, whether those who were circumcised were obliged to keep the whole law. It seems that they were, according to Paul's words: 'For I testify again to every man that is circumcised, that he is a debtor to do the whole law' (Gal. 5: 3).

The reply is that it is quite clear that such men would not be bound by the whole law. The reason is that circumcision was practised before the Law, from which it appears that heathens could receive circumcision without accepting the law. To the passage from Paul it may be replied that he certainly did not mean to gainsay this, but rather that if they circumcised themselves it would be in vain, since if circumcision were good, then the whole law would be good, and whoever professed circumcision would appear to profess the whole law.

A FURTHER DOUBT ARISES whether heathens could be admitted to their sacrifices? It seems they were not admitted to the Passover, according to the citation adduced by Aquinas here (Exod. 12: 48), unless they were first circumcised. But a contrary authority is provided, if we are to credit the history books, by Josephus, who says that they were admitted, and that many came to worship there for religion's sake. The probable reply is that they were not lawfully admitted, but that they sent donations; this is how Josephus understands it. Alternatively, the whole system was by that time corrupt, and they admitted strangers illicitly.

Article 6: Was it appropriate that the Old Law was given at the time of Moses? AQUINAS REPLIES that it was, and gives the proof.

ST I-II. 99: On the commandments of the Old Law

§129 **Article 1: Is only a single commandment contained in the Old Law?**

AQUINAS RAISES this question perhaps because of the second argument, Paul's declaration that the whole law 'is briefly comprehended in this

saying, namely, 'Thou shalt love thy neighbour as thyself' (Rom. 13: 9). This is compared to the passage where Christ said that there were two commandments on which hang all the law and the prophets: 'Thou shalt love the Lord thy God,' and 'Thou shalt love thy neighbour as thyself' (Matt. 22: 35-40). Aquinas' reply is that these two were, if you like, the first principles [. . .],⁴¹ but since they are not present in all men, altogether different commandments have been added.

A DOUBT ARISES as to what is meant by saying the whole law 'depends' on these two? One meaning is the one just stated, another that whoever sins against any other commandment also sins against these two.

A FURTHER DOUBT ARISES whether a sin would be more serious because it breaks two commandments, like adultery which is against both justice and temperance? The reply is that adultery does not involve two different kinds of evil-doing, nor two sins; but according to the argument, it breaks two commandments. *Ergo*, the conclusion is false. On the other hand, sacrilege and adultery together are more serious because they are against two commandments. The reply is that the latter two are 'against two' which are in a sense two distinct species (*species*), whereas these two - 'thou shalt love thy God' and 'thou shalt love thy neighbour as thyself' - behave as types (*genera*) included in any commandment.

But how shall I make confession regarding this commandment? I reply that scarcely anyone transgresses the single commandment about love without transgressing other commandments. Surely only a man who⁴² hates God will fail to keep his other commandments, as well as these two. So no one need be concerned to confess that he has not loved God and his neighbour, since this is of no moment unless it descends to particulars, detailing what manner of hate or harm he has done.

Article 2: Does the Old Law contain moral commandments? AQUINAS REPLIES that it obviously does, and explains what moral precepts are. But against this it follows from his definition that all its commandments are moral because they are all concerned with the actions of the virtues (which is his definition of moral precepts). And the consequence of this

41. The *reportata* are here defective, as shown by the following *dubium* on the word 'depends', which has been omitted from the text, and by the inaccuracy of Vitoria's summary as transmitted by the anonymous *reportator*. Aquinas argues that the commandments are one with regard to their purpose though many in their means, and that to love one's neighbour is the same as loving God, since one loves him for God's sake; Vitoria must have said something like 'these two were the first principles from which all the other commandments depend'.

42. *Nisi hic qui : Nisi his qui MS.* The sentence, and the argument, is obscure.

is false and contradicts Aquinas, because circumcision was not a moral commandment.

The reply is that acts concern virtue in two ways: first, in themselves, by natural law; second, not thus, but by reason of a positive law. For example, 'thou shalt not kill' generally and in itself concerns justice. In the absence of positive law, acts are called moral which are good by natural law. Other acts, however, which are determined by positive law, even divine positive law, are not called moral; for instance, burning incense, which is not good in itself. And precepts of this latter kind may only be observed because they are commanded by the New Law or by positive human law, not by reason of the Old Law.

Article 3: Does the Old Law contain ceremonial as well as moral commandments? AQUINAS EXPLAINS that 'ceremonial precepts' are those which lay down external acts to do with divine worship. By this token, Aquinas shows how just are our present ceremonies in the Church. He concludes by attacking the new heretics who destroy these ceremonies.

Cajetan raises a doubt. Aquinas says that human laws principally order divine worship to create mutual concord between men. If he is talking of just Christian laws, it would be a sin to order the worship of God for human ends. But if he is talking of the laws of the heathen, he should not have adduced such an example. The reply is that this is the commonplace doubt about whether it is lawful to order divine worship for temporal benefits. I believe it is lawful for me to celebrate mass for the health of my father, even when I would not otherwise have done so. The Church itself acts in this way when it celebrates masses and makes processions for temporal goods. Or the king may order the expulsion of unbelievers from the kingdom to prevent civil seditions among the populace; this is lawful, so long as it does not bring the worship of God into contempt. Cajetan replies that human law depends on divine law, and has no authority in its purely human guise to make orders about divine worship; but the legislator has a duty to make orders about the peace of his human subjects, even when it affects divine worship. Cajetan adds a further warning: the ecclesiastical legislator has to ensure amity (*amicitia*) between God and men. He cannot be content merely with ensuring peace among the people; but this is all the civil legislator need concern himself with.

Article 4: Does the Old Law contain judicial as well as ceremonial and moral commandments? AQUINAS REPLIES that it does, and explains what they are.

Article 5: Are there other precepts besides those already mentioned?

AQUINAS RAISES THIS QUESTION because they are often called *testimonies*, *commandments*, and other names in the law, and this may give us pause to wonder.

A DOUBT ARISES, because it seems that in the Law of the Gospel there are clearly more precepts besides these, such as the precept concerning the creed and the sacraments. In reply it is denied that such precepts do not belong to the three categories (moral, ceremonial, judicial); all precepts can be reduced to one of these types. To which, then, does the creed belong? I reply that it may be considered a ceremonial precept, since it enjoins the worship of God, and is hence the preamble, as it were, to all ceremonial precepts. A precept about obedience is, after all, presupposed by every law; without it, there could be no further precepts. One could as well say, therefore, that any ceremonial precept is a precept about the creed. In the same way, precepts about the sacraments are, broadly speaking, ceremonial, since they certainly concern divine worship.

[Lectioes 130–5, which concern the moral and ceremonial precepts of the Old Law, are here omitted. Vitoria's commentary centres on a discussion of the Ten Commandments, and whether ceremonial practices enjoined by the Old Testament such as circumcision, practised by the Jews and by the Ethiopian Coptic Church 'of Prester John', are rendered heretical by the promulgation of the New Law.]

ST I-II. 104: On the judicial precepts

- §136 **Article 1: Are the judicial precepts those which regulate man's relations with his neighbour?** AQUINAS REPLIES that the judicial precepts consist of two essential elements; first, they regulate the relations between men, and second they derive their binding force not from natural law alone, but also, as he proves, from positive law. The distinction between judicial and ceremonial commandments was the same then as now.

Article 2: Were the judicial precepts figurative? AQUINAS REPLIES that a precept can be figurative in two ways: first *primarily and in itself* (in this way ceremonial commandments were figurative); and second, *as a consequence*, this latter being the way in which judicial commandments are figurative.

Article 3: Are judicial precepts of the Old Law perpetually binding? AQUINAS' *sed contra* is Paul's sentence, 'the priesthood being changed there is made of necessity a change also of the law' (Heb. 7: 12). His first conclusion is that the judicial commandments ceased to be binding at our Lord's passion, the moment the Old Law itself became void and ceased to be binding. Second, the judicial precepts ceased to be binding in a different way from the ceremonial precepts; the latter *became not only dead but deadly*, while the judicial precepts merely ceased to have binding force but could be reinvoked if expedient to the commonwealth.

From this and the preceding distinction of Aquinas it may be inferred that nothing of the Old Law remains except the part derived from natural law. Canonists say that tithes belong to divine law; it is certainly not their presence in the Old Law which makes them obligatory, only the fact that they are in divine law. Nor is there any requirement that tithes should be 'tenths'; they could as well have been 'quarters', or whatever was necessary to support the ministers of God. Or tithes could be abolished, and replaced by founding a patrimony for the clergy.

A DOUBT ARISES why, if all these precepts were good for the government of the people as being from God, princes in our own day do not preserve them for the sake of good government, which is their duty? The reply is, first, that this is a specious argument; if any enactment of the Old Law is now on the ecclesiastical or civil statute book, it is merely because that law is reasonable. If people now complain that they are forbidden to marry their siblings, it suffices to say the Lord made this commandment in the Old Law, and hence it is reasonable. In the same way, if people now complain about paying tithes, the Lord also instituted this in the Old Law, and the law was also reasonable, so they should not complain. Secondly, I reply that the argument does not run 'this law was in the Old Law, therefore it ought to exist now'. No; 'first define your times, and then you can make laws to fit them'. Many things which are suitable for one people or country are not suitable for another. There were once laws which decreed that debts should be cancelled after seven years; such laws would be impossible to keep today, amidst all the paroxysms of nations. The same is true of the ancient laws about divorce. Our present princes have therefore chosen some precepts and abandoned others; we must presume that they have been guided by reason.

Article 4: Can the judicial precepts be categorized? AQUINAS REPLIES they can, and explains how.⁴³

43. Aquinas establishes four categories of order: rulers to subjects, subjects to one another, citizens to foreigners, and within the household (cf. §137, footnote 51).

ST I-II. 105: On the reason for the judicial precepts

Article 1: Were the provisions of the Old Law regarding rulers appropriate? AQUINAS REPLIES with the conclusion that the Lord disposed most wisely and well concerning rulership (*principatus*) in the Old Law. The proof is that the best form of government (*ratio gubernandi*) is the mixed. [There are various kinds of regime, the principal ones being monarchy, in which one man rules; another]⁴⁴ called aristocracy, in which a few rule; another, timocracy, in which the populace rules; and the last a mixture of these, which is best. And this was the form ordained by God; ergo.

To explain Aquinas' meaning we must note what Aristotle says about the three good types of government of a commonwealth (*Nicomachean Ethics* 1160^a31–^b22; *Politics* 1279^a32–1288^b2). One is kingship (*regnum*) or monarchy in which a single man rules, as in Spain and France. Another he calls aristocracy, that is the rule of nobles (*optimatum imperium*) where the few rule, like the senators of present-day Venice or of ancient Rome. The other is timocracy or 'power of income', because *timé*⁴⁵ means 'income, worth', and *cratia* 'power'. I do not believe it was called *timocracy* because it gave worth to the poor citizens, however, but because the qualification for participation in government depended on a man's income, those who were wealthier taking a greater rank.⁴⁶ This would be a legitimate and self-sufficient form of government, if regulated by proper laws; it would be specially suited to a warrior community (*militaris ciuitas*) on the frontier with an enemy.⁴⁷

To these three types correspond three bad types of constitution. The opposite of kingship is tyranny, where the ruler orders the government for his own personal profit. Aristocracy has an opposite called oligarchy, where the few wield absolute power by tyrannical means. The third form, timocracy, has democracy as its opposite; that is, rule by the populace (*demos* means 'populace'), where all have equal access to government without laws or reason.

44. optima ratio gubernandi est mixta, quae vocatur aristocratia MS. It is clear that a phrase referring to *monarchia* has been omitted; the passage in square brackets is supplied from Aquinas' text, which Vitoria is here paraphrasing.

45. thimos MS.

46. Vitoria's explanation of *timocracy* is correct; Aquinas does not use the word, calling the popular constitution *democracy* (see *On Civil Power* 1. 8, footnote 43). Aquinas saw the 'democratic' element in the mixed constitution not in terms of popular representation, but in the idea that all citizens share in government (*partem habent in principatu*) 'in that the rulers can be chosen from and by the people'.

47. Vitoria perhaps had in mind certain traditional *fueros* (privileges of autonomy) of medieval Castilian frontier townships, or arrangements such as the *behetrias* (seignorial territories where the freemen had the right to choose their overlord).

Of the three primary types, Aristotle says that kingship, that is monarchy, is the best (*Nicomachean Ethics* 1160^a36; *Metaphysics* 1076^a3). A very strong reason is that the peace, concord, and good-will of the citizens must be cared for; and all these are better preserved if one man is in charge than if many are. If there were many rulers, the populace would chafe under the burden. Second, where there is a multitude there is always confusion. Aristotle lists many other reasons.

THE DOCTORS DISPUTE whether kingship is the best form of government.

1. Aristotle says it is, and so does St Thomas in his commentary on the *Politics* (1288^a16–29) and *De regimine principum* I. 2.⁴⁸ He holds the same opinion in *ST* I. 103, when he proves that the universe is governed by a single ruler, and in *Summa contra gentiles* IV. 76, where he proves that the Church needs a single supreme pontiff because it is reasonable to say that Christ left the best sort of constitution in the Church.

BUT ON THE OTHER HAND Aquinas is saying here that the best form is the 'mixed'; and he repeats this idea above in I-II. 95. 4. His opinions are therefore inconsistent.

I REPLY that the answer to this is twofold. First, Cajetan says that when the three constitutions are compared with each other, the comparison is made in formal and simple terms; of the three taken each on its own, Aquinas says 'monarchy is the best' because he is comparing each on its own to each of the others, simple to simple. But if two can be combined together, that will be better. But I do not imagine this is what Aristotle meant. We can reply in a different way, that there are two ways of speaking of these things: either simply and *per se*, or with regard to circumstances and persons. For instance, prayer *per se* is better than almsgiving; but if the poor are dying of hunger, almsgiving will be better. So it is in the present case. As Aristotle says, if there exists a single man who excels all others in virtue and wisdom then monarchy will be the best form of government; otherwise it will be unjust (*Nicomachean Ethics* 1160^a1–11). Only tell me who this man is, and we shall praise [him]. Likewise with regard to works: since princes do not always excel all others in wisdom, for the sake of peace among the populace other men are also chosen to fill the various posts, *como al Consejo, chancillería, corregimiento*.⁴⁹

48. Compare *On Civil Power* I. 8, 2. 1.

49. 'for example, to the Royal Council, the chancellery, the municipal governorships'. In specifying Spanish organs of government Vitoria drops into Castilian.

A FURTHER DOUBT ARISES whether it is of the nature of kingship that the monarch should have more power than all the citizens together (*supra omnes*), or simply more than any individual citizen (*supra singulos*)?

1. It seems sufficient that he should have power over them individually, since he is elected by the commonwealth, and the commonwealth therefore appears to be higher than the royal office (*supra regnum*). On this question, those doctors who hold the opinion that the council is higher than the pope consequently hold that it is sufficient for the monarch to be higher than the individuals, but not higher than the total citizen body.

BUT ON THE OTHER HAND Almain and Ockham (*De potestate ecclesiae*) argue as follows: 'our opponents confess that the Church is governed by a kingly constitution, but the essence of kingship is that one man should be more powerful than the total citizen body. Yet our opponents contradict this, saying he is only higher than the individual citizens.'

I REPLY that they certainly contradict this definition, at least in Aristotle's version that the head of a family is higher than the individual members of the family and the whole family, and that this is how a king should be. I affirm that the essence of kingship, properly understood, is that the king should both be higher than all together, and also higher than each individual. The proof is that otherwise this polity (*politia*) will be democracy rather than kingship, if the populace is higher than the king and the council higher than the pope. Hence, if the Church has a monarchical constitution, we have no option but to say that the pope is higher than the council. Otherwise I should prefer to deny that it is monarchical.

TO THE FIRST, that because the commonwealth creates the king it is higher than the king, I deny the inference; once the commonwealth has transferred its power to the king, it does not retain that power to itself, otherwise there has been no transfer. And the best polity nowadays is clearly the mixed, as Aquinas says. And this is more or less how it is, wherever there are kingdoms in Christendom.

A FINAL DOUBT ARISES concerning Aquinas' statement that the mixed form of government somehow concerns all the citizens. In other words, is this because the king is chosen from among them, or because they themselves elect him, as some assume? It is also disputed whether it is better that the king should be elected, or should accede to the throne by hereditary succession. See Buridan's commentary on *Politics* III, Question 12, and St Thomas' *De regimine principum*, which says that

election is the better of the two. But there are four reasons why hereditary succession is better. First, because of the obedience and veneration and nobility which it attracts, which would never attach to one chosen from the populace; and to avoid an interregnum when they fail to make an election; and to avoid dissensions in the election.⁵⁰

§137 **Article 2: Were the judicial precepts about peoples' social relations suitably framed?** AQUINAS REPLIES with the *sed contra*: 'He hath not dealt so with every nation, and as for his judgments, they have not known them' (Ps. 147: 20). Aquinas states that a people's social constitution (*ordinatio populi*) is either *set up by the authority of the rulers*, or *established by the will of private persons*.

Since Aquinas has already said that there are three types of government, all of them from the commonwealth, the doubt that arises is whether the commonwealth can change its constitution for another at will, as the children of Israel did, who were first ruled by judges, and then asked for a king. Did they sin? On the other hand, what of the present day? Is the commonwealth, which after all has the power to change every human law, permitted to repudiate its kings and exchange them for an aristocratic government?

The reply is that either rulership (*principatus*), that is the authority to govern, resides in the commonwealth itself, or it does not. If, for example, it is governed by timocratic rule, then it rules itself; and in this case there is no doubt that it can change its regime, since it holds power itself in the persons of its members and can transfer it to whomever it wishes. This still seems to hold true with aristocratic rule: although the commonwealth is ruled by the nobles, authority still does not rest with a private individual, but with the commonwealth, which elected the senators to rule over it. So it also can change its regime, as the children of Israel did when they were ruled by aristocratic rule; they committed no offence (*iniuria*) by asking for a king. But what if the commonwealth has transferred authority to a king? It cannot later ask for its authority back, if it transferred it unconditionally and in perpetuity to the king and his successors. It is no longer lawful for it to change its rule, even if it is expedient to do so. But it remains true that if a king proves to be a tyrant in government the commonwealth can depose him, because even if the commonwealth has given away its authority it keeps its natural right to defend itself; if there is no other way, it may reject its king.

50. The anonymous compiler of these *reportata* let Vitoria's fourth argument in favour of hereditary kingship slip by unrecorded.

A DOUBT ARISES whether, as far as the civil government goes, a prince could restore all the laws of the Old Testament to do with the government of the commonwealth? And it seems that he could:

1. The prince has unlimited power; and these laws were all good, and all judicial precepts.

BUT ON THE OTHER HAND there are some laws in the Old Law which appear to contradict natural law, such as those to do with polygamy, divorce, and the killing of innocents (such as the law about killing all the Amalekites, Exod. 17: 16). Therefore it is clear that the prince could not restore all these laws.

I REPLY with a series of propositions:

FIRST, a king cannot enact all the civil laws which God can enact. This proposition is well known: God can grant dispensation from the obligations of natural law for the benefit of the people, which no man can do; ergo. Indeed, God has already done this, since he gave dispensation that some men should have more than one wife, and that they should be allowed to divorce. But you may reply that if this is true, it follows that the prince does not have sufficient authority to enact laws useful to the governance of the commonwealth. For this reason let us make our next proposition:

SECOND, what is against natural law cannot be universally and generally useful to the commonwealth. Hence nothing is detracted from the authority of the king by admitting that he cannot grant dispensation from natural law. Indeed, the commonwealth could not exist without natural law, which was enacted for the benefit of the commonwealth; that is why nothing contrary to natural law can be universally useful to the commonwealth. Nevertheless, in certain cases according to the time a particular nation may find benefit in something contrary to natural law: for instance, polygamy, which is against natural law, both for the sake of concord in the family and the rearing of children, and because one man cannot satisfy more than one wife. Likewise the killing of innocents, which cannot be universally beneficial to a commonwealth, but which may be well at a certain time; the Amalekites were impious enemies of God, and God decided to destroy them utterly 'from generation to generation' so that not even their seed remained under heaven (Exod. 17: 16).

THIRD – and this is a more difficult proposition – a king does not have all the powers which a commonwealth has. On this proposition, the learned doctors dispute whether a king has complete dominion over

everything in his kingdom. Some reply that he does not, that he is merely governor, not master. But against this is the fact that all call him 'master' (*dominus*), and his subjects 'vassals', a term which can only be applied to those who have a master. The reply is that he is a master (*dominus*), and he has not merely the government, but the dominion (*dominium*), of everything. But I add that he is not a proprietary master; he cannot make use of public things at his pleasure, in the sense of doing whatever he likes with my horse, just as I do. Nor could he give a particular city to the French at his pleasure, unless it were for the benefit of the commonwealth; nor can he give a single vassal to another, unless it be for the benefit of the commonwealth, as giving a brave man a reward is for the benefit of the commonwealth because it encourages the others to bravery. But of his taxes he may dispose as he wishes, just as the clergy may dispose of their rents. And this provides us with our proof for the third proposition, since the commonwealth can indeed give away whatever it likes of its own territory – if it is free, I mean, and has not transferred its governance to a king. Yet a king cannot do something like this. And this is clear also because the commonwealth has not transferred its direct right of ownership (*dominium rerum*) to the king, but only its beneficial right (*gubernatio*).

FOURTH, whatever laws a free commonwealth can enact, a king can also enact, since the governance is in some sense mixed, and hence in some sense limited.

FIFTH, a king can make laws about the four things mentioned by Aquinas, namely 'the order of rulers to their people, of peoples to one another, of the people to foreigners, and of another, etc.',⁵¹ so long as it is useful to the commonwealth. It follows that a king can impose taxes. Many dispute that alcabalas (*gabellae*) can now be justified, since the wars for which they were levied have ceased. But it is not relevant to refer to this; what matters is whether they are now useful for the public finances of the commonwealth; indeed, the king could now demand and impose customs on all portable goods, if it were useful to the commonwealth. On the other hand, if there were sufficient funds from other sources to cover public expenditure undertaken for the benefit of the commonwealth, he could abolish the customs they were already paying. Although it is not for everyone to judge of this, it can nevertheless be publicly established whether the thing is useful.

SIXTH, if a law is expedient for the public good, it is just and enactable, however damaging it may be to private individuals. For example,

51. Compare §136, footnote 43 above; Vitoria makes some changes of phraseology.

mandan echar del reino las tarjas;⁵² this is useful, though it may be to the detriment of certain persons. Or a law that no one should own mules.

SEVENTH, a king may grant dispensation on reasonable grounds from a law made for the common good, even to the detriment of private individuals. For instance, imagine that a law has been carried concerning bequests in trust (*fideicommissa*), that is *de los mayorazgos*;⁵³ the king may grant a dispensation to a particular person with reasonable cause. Thus he might give someone the right to alienate a manor, even to the detriment of the heir to the entail. The same goes for the law which stipulates that a father may not dispose of more than a fifth more than the third of his estate to one of his sons; here too the king can grant dispensation with reasonable cause, as indeed he does whenever he grants a bequest in trust, to create an entail or not.

EIGHTH, if a king grants a dispensation to anyone without reasonable cause to the detriment of another private individual, he does the latter an injury (*iniuria*). Thus if he grants leave to a father to alienate a manor, he does the heir an injury.

NINTH, if a dispensation is granted without reasonable cause to the detriment of a third party, a doubt arises whether the dispensation is binding in the court of conscience? For instance, if the king grants leave for someone to alienate his *mayorazgo*, the doubt is raised whether anyone can lawfully purchase it? The reply is that he can, the proof being that if one has dispensation one does not commit a sin by contravening the law. It is the king who has sinned, if a sin has been committed, not the man to whom dispensation from the law has been granted. Against this, it is clear that the king could not order an elder son after he had inherited a fee tail to divide his inheritance with his brothers; therefore it follows that he could not do so before he had inherited it.

TENTH, it is more probable that, even if a king grants dispensation without reasonable cause, the dispensation is binding, and the third party can lawfully purchase. This is obvious, because the original testator's sole right to make a bequest in trust was the law of *fideicommissum*; once this law is relaxed, therefore, the bequest becomes alienable. It is true that if the king fails to give reasonable causes for the dispensation, it is presumed in law that the dispensation is subreptitious and improper, and no longer has validity in our time.

52. 'they order the expulsion from the kingdom of all bucklers [small, light shields]'.

53. 'about entailed estates' (see the Glossary, s.v. *mayorazgos*). The legal 'doctrine of incompatibility' described in the following sentences, designed to prevent the accumulation of entailed estates, was widely flouted.

ELEVENTH, a king may not justly grant dispensations in every matter on which he is empowered to enact laws. For instance, he might decree that all entails should become alienable. Have no doubt that this will sooner or later come to pass; no theorist of the commonwealth fails to point out the damaging effects of entail, which allows all estates to accrue to a few individuals, leaving the remainder to become impoverished and subservient. The king could therefore pass laws annulling all bequests in trust. Nevertheless, though this would be a just measure if enacted in law, the king cannot meanwhile pursue the policy by means of piecemeal dispensations. It is a condition of law that it should be common to all, that what benefits one should benefit all. In the same way the king might abolish the law which decrees the penalty of hanging for theft, and replace it by some other punishment; but he cannot without due cause dispense some men from hanging to the detriment of others.

TWELFTH, generally speaking in temporal matters laws enacted by the king grant and revoke rights in the court of conscience. I have already explained above that laws are binding in the court of conscience. This is all, in general terms, about royal power.

THIRTEENTH, however, let me add a proposition in particular terms. A king may on no account, and for no considerations of utility to the commonwealth, enact laws stipulating the death of innocents, even against unbelievers, since this is against the express precept of natural law. Those who execute the innocent are simple murderers. Only God is the master of life and death. This is to be understood in substantial terms, that is when the innocent can in fact be saved. A bombardment may, of course, kill innocent as well as guilty, but accidentally. What if they grow up to become fighters against Christendom, you may say, unless we kill them as children? To guard against this one may take them all prisoner.

ON DIETARY LAWS, OR SELF-RESTRAINT

(De usu ciborum, sive temperantia)

The relection *On Dietary Laws, or Self-Restraint*, was supposed to be delivered in 1537. Vitoria was ill in the early months of that year, and did not give his ordinary lectures on the second half of ST II-II. But his substitute, Andrés de Vega, knew the master was working on the knotty problem raised by Aquinas' treatment of cannibalism, a topic on which Vitoria had already delivered an unorthodox opinion in his first lecture cycle on the passage.¹ The finished relection was finally delivered in early 1538; its proper title, *De usu ciborum*, is preserved only in MS P (fol. 96), which further announces that it is a re-reading of ST II-II. 141 'On Self-Restraint'. Only the subtitle *On Self-Restraint* was preserved in later witnesses – though if we are surprised to find cannibalism and human sacrifice the chief subjects of a piece headed 'Temperance', it may do to recall that Montaigne's discussion of Aztec sacrifices occurs in an essay 'On Moderation', immediately followed by the famous 'Of the Cannibals' (*Essais* I. 29, 30).

Vitoria's *divisio* promises two parts, the first of nine articles on gluttony and cannibalism, and the second of three articles on sexual incontinence. However, a few lines after the point where the 'affair of the Indies' is introduced (Article 5), the text breaks off in both P and L. Andrés de Burgos, the copyist of *De usu ciborum* in P, noted in his colophon that part of this fifth article, and the whole of the promised second part on lechery, were missing 'in the original' (fol. 105^v). Brother Andrés also inserted, at

1. Vega remarked at the end of his lecture on ST II-II. 148. 2 Whether gluttony is a mortal sin: 'The fourth proposition is that the eating of human flesh is the only sin of gluttony forbidden in natural law, and not even this in cases of extreme necessity; though I myself recall that our professor Vitoria in his first course on this passage held that it was unlawful even in extreme necessity. But of this he is to deliver a relection, so we must wait until then for the solution' (Vitoria 1952: 6).

the break in the text of Article 5, the baffling note: 'Postpone this question until the relection which the present author is to deliver in a few days, where it will be discussed very fully.' The whereabouts of the missing section of Article 5 remained a mystery for four centuries, until Beltrán de Heredia discovered a copy in 1931 among the personal papers of Vitoria's close friend, Father Miguel de Arcos.² Our extract consists of the opening words of the Introduction (from P), Articles 3–4 (from L), and 5 (from the Arcos MS).

2. Seville, Biblioteca Universitaria MS 333-166-1 (edited in Vitoria 1952: 101–12). On Arcos and his correspondence with Vitoria about the 'affair of the Indies', see Appendix A, pp. 331–3.

RELECTION OF THE DISTINGUISHED MASTER
FRIAR FRANCISCO DE VITORIA ON DIETARY LAWS
DELIVERED IN SALAMANCA, A.D. 1537

ON SELF-RESTRAINT

THE TEXT TO BE RE-READ IS: 'Every moving thing that liveth shall be food for you' (Gen. 9: 3). This is treated by St Thomas in *ST* II-II. 141. And the question is: *is it lawful to eat human flesh?* IT SEEMS THAT IT IS:

1. From the above quotation from Genesis, which makes no exceptions; this at least makes it clear that cannibalism is not a mortal sin, provided that it is not against charity to God or one's neighbour.

2. We find no precept against cannibalism, at least in divine law and statute (*lege et iure divino*).

3. Doctors use a substance called *carne momia* as a medicine.³

BUT ON THE OTHER HAND the law of nations (*ius gentium*) is against it, since all nations have always held it to be abominable. Aristotle describes the cannibalism of certain Black Sea tribes as 'a form of bestiality' (*Nicomachean Ethics* 1148^b15-24).

I REPLY that this question can be resolved in two parts, which come under the heading of self-restraint (*temperantia*). The first is *whether man is obliged to preserve his own life by food*; the second, *whether he is obliged to preserve the species by the custom of marriage*.

[The *divisio* continues by subdividing the first question into nine articles, the second into three. Vitoria then opens the first question with two articles of general considerations about self-preservation and Old Testament dietary laws and customs. The third article opens the discussion of cannibalism as follows:]

3. *Carne momia* was supposedly a powder made from mummified corpses, used for medicinal purposes in the sixteenth century.

§5 Question 1, Article 3: Is it lawful to eat human flesh?

But I come now to the question posed at the outset. And the first proposition is that *eating human flesh is forbidden in divine law*.

1. Some adduce as proof what is said in the passage quoted from Genesis: 'Every moving thing that liveth shall be food for you; as the green herb have I given you all. But flesh with the life thereof, which is the blood thereof, shall ye not eat' (Gen. 9: 3–4). It seems that the eating of human flesh is forbidden by what follows: 'For your blood, the blood of your lives, will I require; at the hand of every beast will I require it, and at the hand of man, even at the hand of every man's brother, will I require the life of man; whoso sheddeth man's blood, by man shall his blood be shed' (*ibid.* 5–6). There seems to be no possible interpretation of this except that it refers to eating human flesh; and that is the opinion of Nicholas of Lyre and Paul of Burgos.

BUT ON THE OTHER HAND the literal interpretation of the prohibition against eating the blood 'of any manner of flesh' in Lev. 7: 26–7 and 17: 14 leaves no room for doubt that it refers to any manner of blood, not specifically to human blood or flesh; and this is true also of the apostles' decree to abstain 'from blood' (Acts 15: 29). Hence this ought also to be the interpretation of the passage from Genesis, and this is how the Jews interpreted it, as is clear from the discussion of the chapter in question in Josephus, *Jewish Antiquities* 7.

I REPLY as follows. First, Cajetan's commentary on the Genesis passage says that feeding on human flesh is forbidden, not in the verse under discussion, but by the words which come after it, that is all the words quoted above from 'For your blood, the blood of your lives, will I require' down to '... shall his blood be shed'. Now Cajetan's argument is that these words do not belong with or follow on from the preceding phrase, 'But flesh with the life thereof, which is the blood thereof, shall ye not eat', but are the beginning of a new sentence. And he points out that Nicholas of Lyre does not read the conjunction 'For' (*enim*) at the beginning of this sentence, but the copulative 'And surely (*utique*) your blood, etc.'. The meaning therefore is: 'But as for human flesh, I forbid you it, etc.'; since whatever is permitted as food must first be killed and prepared, I therefore forbid you (He says) to use human flesh as food, because 'whoso sheddeth man's blood, by man shall his blood be shed, etc.'.

But the Greek translation of the Septuagint here reads *kai gar*, 'for truly' (*etenim*), and this is also the reading of the translators from

Hebrew and Chaldean.⁴ Nevertheless, Cajetan's interpretation is still tenable, and I find it convincing. Thus in the first phrase 'But flesh with the life thereof, which is the blood thereof, shall ye not eat', God shows the natural custom for eating meat, that is to say cooked not raw, since any other custom is barbarous and savage. After that follows the phrase 'For truly your blood, the blood of your lives, will I require', as if to say: 'I have just decreed that you may lawfully eat meat, but I do not allow you to eat human flesh, for I shall demand your blood.'

This can also be proved by logic, as I argued at the beginning, *because anthropophagy is held in abomination by all nations who have a civil and humane way of life; therefore it is unjust.*

The premiss is clear from history. True, we read of certain savages around the Black Sea and the Danube who practised anthropophagy; the Issedones, a people who live on the banks of the Danube, used to invite their whole clan to celebrate the funerals of parents and kinsmen with sacrifices and revelry, then cut the bodies into joints, stewed them with the meat of domestic animals and seasoning, and made a feast of them. So, too, the Massagetae of India, when their kith and kin reached old age or were brought to death's door by some accident, would first slit their throats, then prepare a splendid banquet and eat them in a hotchpotch with other titbits.⁵ Ulysses in Homer tells how the cruel Laestrygonians devoured his companions roasted on spits (*Odyssey* X. 80–132); Pliny opines that the Laestrygonians' home must have been near Mount Etna, to judge from Virgil's description of the man-eating Cyclops (*Aeneid* III. 622–7).⁶ But all these historians and poets describe this custom as an unspeakable and inhuman act of savagery.

The deduction from the premiss is proved because a thing is said to be against natural law when it is universally held by all to be unnatural.

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4. Vitoria was here using the celebrated Complutensian Polyglot (Alcalá, 1517), which for the first time printed the Hebrew, Syriac ('Chaldean'), Greek Septuagint, and Latin Vulg. texts of the Bible in parallel columns (vol. I, fol. biii^v contains the Greek and Syriac versions of this passage, with interlinear Latin translation).
 5. The ultimate sources for these accounts are Aristotle, *Politics* 1338^b19 (Achaeans and Heniochi on the Black Sea); Herodotus IV. 25 (Issedones); and Strabo, *Geography* XI. 8. 6, c 513 (Massagetae).
 6. *L* Et Plinius putat Caiet. [*sic, pro circa Aetnam*] fuisse Laestrygonum sedem. Pliny located the Laestrygonians around Formiae in Campania (*Natural History* III. 59), but also mentions the Etna hypothesis (*ibid.* 89) on the basis of Virgil's celebrated account of the Sicilian Cyclops feasting on the 'crackling bones, spouting blood, and trembling limbs' of Odysseus' men (*Odyssey* IX). The humanist Peter Martyr, first royal chronicler of the Indies, identified the Laestrygonians with the Carib Indians as early as 1494 (Martyr 1530b: fol. xxv), and had recently published a 'scholarly' account of their anthropophagy (Martyr 1530a: fols. iii^v–vi).

Hence if all men have held this practice to be disgusting and base, it is base in natural law.

Cajetan provides a further proof, in the passage already quoted: food is ordained according to the thing it is supposed to feed, and consequently ought always to be less noble than the eater. *Ergo*, man cannot be food for man. Indeed, even heathens hold anthropophagy an unspeakable crime; the pagans accused the Christians of the outrage of murdering children in their night-time sacrifices and then eating them, as Tertullian (*Apologia* 5) and Eusebius (*Historia ecclesiastica* V. 1. 15) both recount.⁷

The deduction can also be proved *a posteriori*, because anthropophagy must inevitably be a cause of homicide and murder, as is evident in the case of the barbarians who practise it. Furthermore, burial is clearly a right in natural law: everyone has a right to be buried, as stated in the decretal *Fures* (X. 5. 18. 2), the canon *Quaesitum est ab aliquibus* (Decretum C.13. 2. 30), and the decretals *Cum quis cuius maiores* (Sext 3. 12. 2), and *Nos instituta* (X. 5. 28. 1).⁸ Yet this right would be taken away if feeding on human flesh were lawful. Furthermore, it would mean injustice (*iniuria*) at the resurrection, since men's bodies would be mixed up together. Again, to bury the dead is a work of mercy, as clear from the stories of Tobit (Tobit 1: 17–2: 11; 12: 12–13) and Simonides,⁹ so that to cast them out unburied is an impiety; it is even forbidden to leave the bodies of executed criminals unburied (Deut. 21: 22–3).

It is inhuman, in fact, not merely to eat human flesh, but even to give it to beasts to devour, as the Caspians, Bactrians, and Hyrcanians are reputed to have done. This is clear from the passage of Genesis already discussed: 'For the blood of your lives, will I require, at the hand of every beast will I require it.' What is forbidden here appears to be nothing other than feeding human flesh – for that is the subject of the passage – to beasts. Again, even pagan authors condemn the drinking of human blood as a grim and ghastly deed, as in the accounts of the plot of Catiline in Sallust (*Coniuratio Catilinae* 22) and L. Annaeus Florus (*Epitome* II. 12). Furthermore, piety is a natural thing, even for the dead. It is unlawful, therefore, to abuse their corpses. And last, the

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7. The reference is to the slander of the 'Thyestean feast', a pagan interpretation of the eucharist.
 8. These canons establish that even executed criminals can be given Christian burial.
 9. The well-known story of Simonides, who buried the body of an unknown sailor and was rewarded by a warning from the dead man's ghost not to board a ship which subsequently sank, is told in Cicero's *De divinatione* I. 56.

eating of human flesh is a sin of bestiality, as Aristotle says (*Nicomachean Ethics* 1148^b 15–24).

§6 BUT THE REAL DIFFICULTY IS whether it is lawful to feed on human flesh *in extreme necessity*? And it seems that it is:

1. It would be lawful, as I assume for the sake of the argument (more of this anon), to eat pork in such necessity in the Old Law, notwithstanding the precept of divine law which forbids it; and therefore it would also be lawful to eat human flesh.

2. It is lawful to amputate a limb for a man's health; why should it not be lawful, therefore, to eat a limb, if it is necessary to preserve life?

3. It is lawful to use what doctors call *carne momia* as a medicine; therefore one could use it as a food, if absolutely necessary.

BUT ON THE OTHER HAND the probable conclusion is *that it is not lawful to feed on human flesh in any kind of necessity*. This is clear from the loathing which historians evince whenever people in a siege have resorted to this horrible food; see Quintilian's declamation about the legate who failed to arrive with corn to eat (*Declamationes maiores* 12 'Cadaveribus pasti').

I REPLY that if it were lawful to feed on human flesh in extreme necessity, then of course it would be obligatory for men to do so. Now this consequence is false, since men have never done so, nor has anyone ever advised or dared advise them to do so, even in times of famine or siege; but the syllogism is faultless in common logic, since if thing *X* is lawful, and there is no other means, it is clear that *X* is obligatory. The falsehood of the major premiss, thus proven, is confirmed by history. Josephus recounts that Mary, daughter of Eleazar, killed her own son in the direst straits, boiled him, and then ate half of the body; but even the most depraved and in other respects most heartless men, unable to eat up the left-overs of her sickening crime, turned away in horror from the feast despite their urgent need of food (*Jewish War* 6).¹⁰

However, Cajetan in his commentary on *ST* II-II. 148. 4 admits as probable Martin's view that in extreme necessity it is not unlawful to eat the bodies of men killed in battle; although in any other circumstances, he says, it is the most mortal of sins. Martin asserts that anyone who craves human flesh solely from epicene gluttony and delight in the taste commits a mortal sin; this seems to imply that it is not a sin in necessity,

10. The story of Mary is quoted in Eusebius, *Historia ecclesiastica* III. 6, which is probably Vitoria's source here.

or not a mortal sin. Alfonso de Madrigal el Tostado, bishop of Avila, in his commentary on the passage about the woman of Samaria who ate her son during a siege (2 Kgs. 6: 26–9), also holds that it is not unlawful in extreme necessity. But St Thomas says that ‘vices which contravene human nature, such as anthropophagy, buggery with animals, or sodomy, are execrable’ (ST II-II. 142. 4 ad 3); this shows that he considered eating human flesh to be as evil as buggery with animals, which is inadmissible under any circumstances, and therefore anthropophagy must be inadmissible under any circumstances. Also relevant is Aristotle’s dictum that there are ‘some acts which we cannot be forced to do, but ought rather to face death after the most fearful tortures’ (*Nicomachean Ethics* 1110²⁵–7). Even if everyone agreed that it was necessary to fornicate to save one’s life, it would not be lawful to do so; how can it be lawful to eat human flesh, which is a far worse thing in itself? It may be replied that fornication is intrinsically evil, while eating human flesh is not; but this is a *petitio principii*. On what grounds can the distinction be made, when all men consider eating flesh to be more abominable than fornication?

Almain establishes the conclusion: that no fear, even of death, can excuse an act forbidden in natural law (*Moralia* 3). Read him, and you will find my position vindicated.

But if anthropophagy is lawful in extreme necessity, what of it? Even if one of the barbarians were compelled by fear to eat human flesh, it is irrelevant whether the threat is from within or without. And if it is lawful, the wonder is that it never needed to be forbidden even during the siege of Jerusalem by Vespasian, where so many thousands died of hunger; nor in the siege of Jerusalem¹¹ when Jehoram was king of Israel, when the famine was so great that two mothers made a pact to eat each other’s sons – and, what is stranger still, when the prophet Elisha was there and could have advised them (2 Kgs. 6: 24–33). But no one has ever yet counselled such a thing in any country, even in the most extreme famine; *therefore it is altogether unlawful*.

Question 1, Article [4]¹²: Is it lawful to practice human sacrifice?

LET US ACCEPT that it is not lawful to eat human flesh; *is it then lawful to make human sacrifices*, as the barbarians do? It seems that it is:

11. The name of the city should read ‘Samaria’.

12. In *tertia quaest. L.* The correct numeration has been restored according to Vitoria’s initial *diuisio*.

1. It is not against natural law, because many nations in the past have practised it. The Scythians and Taurians sacrificed visitors to Diana; at Laodicea they sacrificed virgins to Pallas Athena; the Arcadians, a boy to Zeus Lycaeus; the Carthaginians, boys even of the highest nobility to Saturn. Human sacrifice was also practised by the Druids, philosophers of the Gauls, and by the Cimbri and Blemmyae (see Alexander of Hales, *ST*, fol. 193). Indeed, Agathus recounts that the Carthaginians in defeat slaughtered the sons of their nobility before the altars 'to propitiate their gods'. And the Germans, the Cimbri, the Senones, and almost all these nations believed that the efficacy of these sacrifices was the expiatory or purificatory virtue of human blood; not one of them lacked some such religious explanation. Among them, we read that the Romans by their sacred books of prophecy buried alive [two pairs of foreigners, Gauls and]¹³ Greeks, in the Forum Boarium to propitiate the anger of the gods; this was done by the consuls L. Cornelius Lentulus and P. Licinius Crassus.

2. The Lord commanded Abraham to sacrifice his son Isaac (Gen. 22); but Abraham would not have obeyed if it was against natural law.

3. Jephthah offered his only child, his daughter, as a burnt offering (Judg. 11: 30–40); yet he is numbered among the saints (Heb. 11: 32). It is strange, if this was against natural law, that Jephthah, being a religious man, did not realize that it was impious; or that he was not warned by the priests, especially as it is written that 'the Spirit of the Lord came upon Jephthah', and that it was at the prompting of this spirit that he 'vowed a vow' which he later fulfilled. On this point, see St Thomas, *ST* II-II. 88. 2 ad 2, and his commentaries on Lombard's *Sentences* IV. 38. 1. 1, lect. 2 ad 2, and on Heb. 11, lect. 7; also Augustine on Judg. 11 (*Quaestiones in Heptateuchum* VII. 49), where he leaves open the question of whether or not Jephthah sinned.

4. Our Redeemer sacrificed himself on the cross.¹⁴

§7 BUT ON THE OTHER HAND the conclusion that it is forbidden in divine and natural law to sacrifice men to God is clearly proved by the following passage from Deut. 12: 29–30:

When the Lord thy God shall cut off the nations from before thee, whither thou goest to possess them, and thou succeedest them, and dwellest in their land, take heed to thyself that thou be not snared by following them, after that they be destroyed from before thee,

13. The passage is confused in Boyer's text; the emendation restores the story of the well-known anecdote.

14. There is no reply to this *objectum*, which may therefore be an interpolation.

and that thou enquire not after their gods, saying 'How did these nations serve their gods? even so will I do likewise.' Thou shalt not do so unto the Lord thy God; for every abomination to the Lord, which he hateth, have they done unto their gods, for even their sons and daughters they have burnt in the fire to their gods.

And in Num. 18: 12 – 15, where the Lord orders that all firstlings should be offered to the Lord and belong to the priests, He nevertheless orders the following exception, which is to be commuted for payment: 'Every firstborn thing that openeth the womb in all flesh which they bring unto the Lord, whether it be of men or beasts, shall be thine; nevertheless the firstborn of man shalt thou surely redeem.' From which Augustine, in the commentary on Judg. 11 quoted above, says that it is clear enough that human sacrifice, at least, is forbidden and displeasing to God.

I REPLY that the passage from Deut. 12, at any rate, proves that human sacrifice is forbidden not only in divine law, but also in natural law, since the heathen were bound by no law except the natural, and yet it numbers the sacrifice of human blood among their abominations. But why is this? As for sacrificing an innocent man, it is clearly against natural law to kill the innocent, since this is one of the Ten Commandments. But the case of the criminal is more doubtful. If a bull is killed in God's honour, what is the objection to killing an impious wrongdoer in God's honour? Indeed, is it not considered lawful even nowadays to kill an unbeliever for love of God? Why is this not a sacrifice?

The answer to this is clear from St Thomas, *ST* II-II. 85. 3 ad 3, and more clearly still in II-II. 86. 1. A sacrifice is when something is brought to divine worship to be consumed. It is not sufficient for an act of worship that the thing be made an oblation; it must also be consumed in honour of God. Hence in the mass the offering of the chalice is not a sacrifice, but the eucharist is. Now from this we can argue as follows: either the criminal is condemned, or he is not. If not, his murder is unjust and contravenes divine law, and indeed natural law, since no one can incur punishment before he is condemned. If, on the other hand, the man has been condemned for his felony, his death can no longer be called an act of worship; since his death is to take place anyway on other grounds, it cannot be for God or in God's honour. The oxen which are butchered in the slaughterhouse do not become a sacrifice because the butcher says he intended to kill them for love of God; nor, then, can condemned criminals be sacrificed, lawfully or unlawfully, because to sacrifice a man to God, properly speaking, means to kill him for that reason alone, which is not the case of a man condemned to death for other reasons.

Besides, every sacrifice is also a kind of offering, as St Thomas says in the passages adduced above. But when someone makes an oblation or offer of something for which he has no use or which he would otherwise throw away, this is not and is not called a gift. It is no more a gift or offering for a man to give God some wine or an ox or sheep which is wholly unusable for any other purpose, than to give stones or sand. To make an offering is to deprive oneself of something in order to offer it up to God. Hence, since a condemned man is not a thing of value but a pestilence, no sacrifice can be made by offering him. Besides, it is forbidden to make an offering of any animal which is blemished by a wen, scurvy, or scab (Lev. 22: 19-24); hence it would clearly be an irreverence to offer a man who is a wrongdoer. The conclusion is, therefore, that *it is not possible to make an acceptable sacrifice to God either of an innocent man or of a criminal.*

It would further seem that the power of taking another's life does not properly speaking belong to a man as the power of taking the lives of animals does. He is not master of his own and other men's lives to the same degree as he is of brutes; the latter he may destroy or kill as he wishes without injustice (*iniuria*), but a man who takes even his own life commits an offence. From this it is clear that the life of man belongs rather to God, who is the Lord of life and death. Now since a sacrifice should be made from our own goods which we offer to God, it is clear that we cannot make a sacrifice of a human life.

Finally, about our duty to worship God we can know only from God Himself. Wherever the teaching of God and the prophets has reached, such sacrifices have never existed, so *they were never pleasing to God.*

Yet if someone were to contend that this still does not prove that *human sacrifice was ever forbidden in natural law*, we might be able to excuse these barbarians from the charge of impiety, at least before the evangelical law was preached to them, on the grounds that they were excused by their ignorance of the Gospel. The latter forbids not only this type of sacrifice, but all others except only the sacrifice of the mass, as Paul makes clear in his epistle to the Hebrews: 'But Christ being come an high priest of good things to come, neither by the blood of goats and calves but by his own blood he entered in once into the holy place, having obtained eternal redemption for us' (Heb. 9: 12). But the fact is that no argument from reason can be given for any kind of sacrifice, let alone human sacrifice, except that God revealed it; and since He has no need of any of our goods, it seems rather absurd to kill an animal to earn God's thanks. From this argument alone, therefore, we may infer that *no sacrifices existed in the state of innocence.*

The answers to the objections are therefore clear:

TO THE FIRST one may reply that no nations have ever practised human sacrifice unless they were already idolaters. After the demon led them into the first great error of worshipping false gods, the same demon also persuaded them to worship them with these wicked sacrifices. This error never takes hold of a people without bringing in its train a host of other intolerable errors; as Paul says, 'for this cause God gave them up unto uncleanness and vile affections' (Rom. 1: 21–32). Second, it is clear that God damned these sacrilegious rites in Deut. 12. This sanction against sacrificing a man or purifying a house with blood applied also to the consuls Cornelius Lentulus and P. Licinius Crassus

TO THE SECOND concerning Abraham, St Augustine comments on Judg. 11 (*Quaestiones in Heptateuchum* VII. 49) that although such sacrifices are forbidden in general law, acts like suicide or the murder of innocents may be committed on special occasions at the Lord's command, as when He commanded Saul to kill all the Amalekites, man, woman, and child (1 Sam. 15: 3). Or perhaps, says Augustine, Abraham thought the Lord would bring his son to life again, and that he would not lose Isaac at all. But why should he have thought this, when he had God's command to the contrary? The answer is, by an inner revelation whose prompting Abraham could not gainsay. But the very fact that God finally prevented Abraham from carrying out the command, says Augustine, shows His displeasure at such sacrifices.

TO THE THIRD concerning Jephthah, Augustine has a good deal to say in the same book. First, he not only condemns the fact that Jephthah carried out the sacrifice, but also the vow, which was evil in itself. It is clear that he was not thinking of sacrifice of any normal kind, since he did not say 'whatever comes out to meet me', but 'whatsoever cometh forth of the doors of my house to meet me when I return in peace from the children of Ammon shall surely be the Lord's, and I will offer it up for a burnt offering' (Judg. 11: 31). Now domestic animals do not normally come out to meet a general returning from the wars, except perhaps a dog, which would be quite unsuitable for sacrifice. Thus it is clear that in this vow he was thinking, if not of his daughter, at any rate of some human being. But since the Bible passes no judgment either on the vow or on the deed as it does on the story of Abraham, Augustine says, it is left to us to form our own judgment according to the rules of the Scriptures. We could argue, he says, that the vow was so displeasing to God that He allowed his only daughter to run to meet him as revenge for the vow. And He did not forbid Jephthah to carry out the vow in the ensuing sixty days, as He forbade Abraham. Nevertheless, later in the same chapter Augustine admits the argument that both vow and deed were done at the bidding of the Holy Spirit, and suggests that the

intention was perhaps to prefigure through this human victim the sacrifice of His son Christ. If that is the case, says Augustine, we should not criticize Jephthah's rashness, but praise his obedience.

St Thomas seems to stand by the first of these two solutions (*ST* II-II. 88. 2 ad 2). His argument is very similar to Augustine's; Aquinas quotes Jerome to the effect that Jephthah was 'foolish in making his vow, and impious in its fulfilment'. St Thomas and Jerome seem to condemn the vow only for its foolhardiness, because it could so easily turn out badly, whereas Augustine appears to condemn it in itself, as if its intention was simply to sacrifice a man. It would have been no very grand gesture to promise the burnt offering of a single ox or ram for such a great victory; he intended to vow something really grand. St Thomas argues rather differently in his commentary on Lombard's *Sentences* (in IV. 4. 1. 2, lect. 2 ad 2), and in his readings of Heb. 11 (lect. 7); but he does not condemn the vow, only the deed which followed. Jephthah, however, is praised for his faith by Paul (Heb. 12: 32), just as Gideon is in the same place, despite his sin in trying to test God with the fleece (Judg. 6: 36–40) and the making of the ephod 'after which the multitude of the children of Israel went a whoring' (Judg. 8: 27). As St Thomas says, we believe that both men repented of their sin.

Question 1, Article 5: Is it lawful to make war on the barbarians if they practise anthropophagy and human sacrifice?

HAVING ESTABLISHED that it is not lawful to feed on human flesh or to sacrifice humans, there arises a moral question:¹⁵ if there is anyone who practises the sacrilegious custom of feeding on human flesh or makes these awful sacrifices, such as these barbarians discovered in the province of Yucatán (that is, in New Spain), *can Christian princes on their own authority use this reason to declare war on them?* And how far is it lawful, if Christian princes cannot do this on their own authority: *can they at any rate do it on the authority of the supreme pontiff?*

Now Agostino Trionfo (*Summa de potestate ecclesiastica*), Antonino of Florence, and Silvestro Mazzolini da Priero (*Summa Syluestrina*) say that if there are any nations which act against the supernatural divine law of revelation, they neither can nor ought to be violently stopped from violating the law in the same way as ordinary individual sinners against Christian law can be, or as sinners against Mosaic law formerly were. The reason is that such nations cannot be convinced by manifest

15. The Arcos fragment begins here.

proofs of the evil of their actions, and hence cannot be judicially condemned. No one can be punished without prior condemnation, so these peoples cannot on this pretext be forcibly prevented from committing their sins by war or any other form of persecution.¹⁶

AND THAT SEEMS to be true and conformable to St Thomas' *ST II-II*. 10. 8, where he says that pagans are not to be forcibly converted to the faith *because belief is an act of will*; not even Jews can be forcibly converted if they have never accepted the faith. The proof is that no one can coerce or punish another unless he has power over him, but no power extends to coercing the will; therefore it is not lawful for anyone. The minor premiss is proved by the fact that civil power does not extend this far, because it is from the people; the people never wished to confer spiritual power, nor does it seem within their power to do so. Hence it is clear that not even its own temporal subjects can be coerced to accept the faith by the civil power. In the same way, those who are not subjects cannot even be coerced by the spiritual power, since spiritual power at the present day only holds over those who have been baptized: 'for what have we to do to judge them also that are without?' (1 Cor. 5: 12). But I shall have more to say of this in a moment.

But there is another argument, put forward by those doctors who say that there are unbelievers who commit sins against nature, such as idolatry or pederasty or buggery, who can be forcibly stopped. And here the reason is that they can indeed be convinced by manifest proofs of the fact of their offence against God. Therefore in this case it is the business of princes, who are God's servants, to defend the glory and honour and law of God. On the other hand, by this argument it would be lawful to declare war on all unbelievers, since they are adulterers or fornicators, perjurers or thieves; all these things are against natural law, and can be convincingly demonstrated to be evil. But the princes of unbelievers cannot wage war against Christians, even though they are adulterers and thieves; conversely, therefore, Christian princes cannot wage war on them either. The proof of this syllogism is that the latter have no greater power than the former in this respect: if Christian princes can punish unbelievers or wage war on them, by the same token unbelievers can punish Christians. Again, one Christian prince cannot

16. At this point the text breaks off in both *P* and *L*: *P* with the note 'Postpone this question until the relection which the present author is to deliver in a few days, where it will be discussed very fully', and *L* with 'This conclusion belongs to the author's relection on this subject, *On the American Indians* printed above, where you may see it extensively discussed.' Their text then continues with Article 6 'Whether it is lawful to abstain for ever from certain foods'. The remainder of our text of Article 5 survives only in the Arcos fragment (Vitoria 1952: 101-12).

declare war on another Christian prince on the grounds that he allows his subjects to practice pederasty; neither, therefore, can he do so on a non-Christian prince. A Christian prince has no more power over an infidel prince than over another Christian. Besides, why should the passage 'for what have we to do to judge them also that are without' be any less true of a prince than it is of the pope?

So much, then, for those who say that because the barbarians have sins against nature such as anthropophagy and human sacrifice they can be justly subdued by war. Others say that the civil power does not extend to this, because it is a matter concerning the spiritual salvation of the soul, which does not belong to civil power; but that it does concern the pope, and that consequently Christian princes may at least undertake such wars on the mandate of the pope.

To resolve this question we must distinguish whether anyone can force unbelievers to give up these and other such rituals, since there is a difference between coercion by their own prince and coercion by a foreign one.

LET US THEREFORE MAKE THE FOLLOWING CONCLUSIONS:

1. FIRST CONCLUSION: *non-Christian princes can force their own subjects to give up these rituals or others like them.* This conclusion is proposed merely with a view to establishing the subsequent ones; it presents no difficulty in itself. The proof is obvious, because they are empowered to enact any laws suitable to the commonwealth, and to punish transgressors. But a law against such rituals would be of the utmost suitability, *ergo*. A second proof is that, as St Thomas so elegantly explains, the intention of law and legislators is to make the subjects good (*ST* I-II. 92. 1). But they cannot be good if they live with bad customs; therefore it is the prince's duty to abolish these evil rituals. The confirmation is that it is the business of the legislator to make the civil community (*ciuitas*) good, which cannot happen if the citizens are bad; therefore it is his business to prohibit vices.

THE COROLLARY OF THIS IS that if any barbarian prince is converted to the faith, he does no injustice (*iniuria*) to his subjects by abolishing their idolatry and other unnatural rituals. Indeed, he is obliged at least to abolish idolatry if he can, even if they persist in their unbelief. It is clear that he does not lose this authority because he has become a Christian.

2. SECOND CONCLUSION: *this is true not only of unnatural sins, or even sins against the law of nature, but also of any sins whatever against divine*

law or even against revealed law. In this respect there is no difference between sins.

Now this is a more lively question. The conclusion is a novel one, but I think it can be amply proven. As in the previous conclusion, the first proof is that it is the prince's business to make his citizens good. But they cannot be good if they act against divine law, even of the revealed and supernatural kind. Therefore he can compel them to obey divine law. The second proof is that it is the prince's duty to make his subjects happy. But there can be no happiness when they are not good, and no goodness if they do not keep all God's commandments; *ergo*. Third, a king can enact laws not only in accordance with natural law, but also in accordance with any divine law, since the commonwealth has civil and spiritual power over itself by natural law, and the king has the power of the commonwealth; therefore the king may make such laws. He may, indeed, create obligations in matters which have nothing whatever to do with divine law, simply because they are suitable, such as sumptuary laws or laws about military service; therefore, since matters of divine law are *even more suitable*, why should he not make binding laws about them too? Again, unbelievers have their own priests – false ones, to be sure, but elected by the commonwealth to administer spiritual matters; they, at least, could frame laws concerning the spiritual health of their citizens. And if a father can compel his sons to observe divine law, so can a king.

Now the contrary argument, namely 'that they cannot be convinced by manifest proofs', is invalid. First, for a person to be condemned or punished it is not necessary that he should be so convinced of the evil of what he has done that he confesses it himself, nor even that his crime be self-evident. It is sufficient that the judge should declare the verdict properly established by the witnesses, and that the evidence should be unanswerable. But as far as the things of the faith and divine law are concerned, a non-Christian prince may have witnesses as unanswerable as you like, such are the miracles and other testimonies of the faith; why, then, should he not condemn and punish his subjects, if they act against such powerful evidence? Belief in the articles of the Christian faith is a matter of self-evidence, as St Thomas says (*ST II-II. 1. 4 ad 2*). A further confirmation is that a prince cannot account with self-evident reasons for many of the things which he suitably commands, but only with probable ones. Nor can all things in natural law be self-evidently proved, at least not to everyone's satisfaction. But this does not stop the prince from being able to coerce them; indeed, power is given to the prince precisely because he is able to decide what is best to do when others do not know.

THE COROLLARY OF THIS IS that if a barbarian prince becomes a Christian, he may make suitable laws, not only according to natural law but also according to the Gospel, and he can coerce his subjects to obey these laws. Mind, this does not mean he can force them to believe or accept baptism; only to accept certain things revealed in the Gospels, even though they cannot be proved in natural law, such as that usury and fornication and lying are evil. And he can compel them to give a hearing to Christian doctrine, and also abolish altogether any of their rituals and superstitions, even if they are not against natural law. And so he can altogether abolish sacrifices, and compel them to follow the true God and the observance of His laws. Even if this prince does not altogether believe the faith, and accepts only part of Christian law, he can compel his subjects to obey that part. All this I put forward on the understanding that it is lawful *per se* at any given time, so long as it does not cause provocation to unrest or worse consequences, and is to their long-term advantage.

See my lectures on *ST I-II. 92. 1* (*On Law* §122 *bis*) for the confirmation of all this. As St Thomas says there, the intention of the law or the lawgiver is the blessedness (*beatitudo*) and happiness (*felicitas*) of the city and the citizens; hence Aristotle defines those legal enactments as just which 'tend to produce and preserve happiness' (*Nicomachean Ethics* 1129^b14–19). But happiness cannot exist without virtue and upright will, as St Thomas also teaches (*ST I-II. 4. 4*). As he elsewhere proves, *true virtue cannot exist without charity*, the informing principle of virtues (*ST I-II. 65. 2*), since *no virtue without charity is simply a virtue*, not being simply good, so that without charity it is not true virtue (*ST II-II. 23. 7*), and *charity is the effective form of the virtues* (*ST II-II. 23. 8*).

THE COROLLARY OF THIS IS that it is evident that, since 'virtue is what makes its possessor good',¹⁷ those who are without faith or charity cannot be good. Now John Buridan raises the question, in his commentary on Aristotle's *Politics* V (quaest. 10), whether the effect of law is to make men good? He replies that it is, adducing Aristotle's dictum 'the wish of every legislator is to make the citizens good' (*Nicomachean Ethics* 1103^b3);¹⁸ and adds the proof that the purpose of the legislator is to order men for happiness, but that end is chiefly achieved through the virtues. Almain says: 'The purpose of political life (*finis politicus*) is to live according to virtue' (*De origine iuris* 2); this is apparently confirmed

17. This is the form in which Aquinas (*ST I-II. 92. 1*) quotes *Nicomachean Ethics* 1106^a15. Aristotle says: 'every excellence brings into good condition the thing of which it is the excellence and makes the work of that thing be done well'.

18. ex 3. polit. *MS*.

by the passage 'Let every soul be subject to the higher powers . . . for rulers are not a terror to the good work, but to the evil; and wouldest thou have no fear of the power? do that which is good'; and the prince 'beareth not the sword in vain, for he is a minister of God, an avenger for wrath to him that doeth evil' (Rom. 13: 1-4). Therefore, if the king is assured that people are doing wrong, he may punish them.

Furthermore, Buridan asks whether peace is the purpose of a civil community (*ciuitas*), and replies that it is not: happiness is the purpose of the polity (*politia*), and peace is only a means to the happiness which is the ultimate end of the polity (in *Politics* V. 3). Aristotle discusses the purpose of civil society, and determines that it is well-being and happiness (*Politics* 1278^b15-25); hence virtue is necessary, and measures to safeguard virtue are necessary; he says lower down that the purpose of civil society is to { }¹⁹ and guide to the life of active virtue. Therefore it is clearly the business of the legislator simply to make men good absolutely speaking,²⁰ according to the true virtues, without any finical distinctions as to whether that means according to natural law or positive divine law. A ruler would not be acting in good faith if, knowing what was best for his citizens and what was disastrous, he was able to correct them but failed to do so.

THE COROLLARY OF THIS SECOND CONCLUSION is that, so long as no provocation to unrest ensues which may lead to a worse result, Christian princes can compel their non-Christian subjects to give up not only those of their sins and rituals which are against natural law, but also those which are against divine law. This is clear from what has been said, because it is their business to make their subjects good, which they cannot be if they persevere in their rituals. I emphasize the phrase 'so long as it does not lead to a worse result', because in moral terms this might not apply. St Thomas correctly concludes that, in moral terms, unbelievers are *not* to be forcibly converted to the faith (*ST* II-II. 10. 8). But in political terms, if all Saracens were obliged by command of their prince to become converts, and no unrest were to ensue, it seems that such compulsion would be altogether lawful, and indeed that they would be under a duty to obey.

The confirmation of both the first and the second conclusion is as follows. If certain subjects were to elect a prince with complete power concerning everything both in the human polity and in religion, such a prince could compel them to accept the true religion. The same is therefore true of a legitimate prince, who I assume holds all the power

19. Blank in MS.

20. Compare *On Law* §122 bis. in *ST* I-II. 92. 1.

which is at the disposal of the commonwealth to confer. Both conclusions certainly seem to accord with St Thomas' real though unexpressed thoughts; in *ST* II-II. 10. 11, where he considers whether the rituals of unbelievers are to be tolerated, he replies that such infidel rituals are to be tolerated for any good there may be in them, but not otherwise, unless perhaps to avoid some evil consequence such as unrest and disturbance at their suppression. It follows that a prince may abolish all false rites; would this not mean that they were, in effect, being forcibly converted?

BUT THE REAL NUB OF THIS QUESTION is *what powers Christian princes have over unbelievers who are not under their dominion?* To this let us proceed as follows:

3. THIRD CONCLUSION: *as regards this category of unbelievers, Christian princes have no more powers with the authority of the pope, than without it.*

The proof is that unbelievers are not subjects of the pope; the pope therefore can confer no authority over them upon a prince. By this I do not mean that the pope cannot order some prince to take measures for their conversion, or the good of the faith and the Christian religion, or pronounce an interdict on some other prince for the same purpose. But I affirm that whatever a prince may lawfully do in this respect on the authority of the pope he could also lawfully do *per se*.

My lord archbishop Antonino of Florence held the contrary opinion (*ST* III. 22. 5 §8). He lists a few propositions:

1. The pope has authority over pagans. The proof is that Christ had this power, even in his human person; the pope is the vicar of Christ; *ergo*, the pope also has this power. The major premiss is established by the passage: 'Christ humbled himself, and became obedient unto death, wherefore God also hath exalted him and given him a name which is above every name, that at the name of Jesus every knee should bow, of things in heaven, and things in earth, and things under the earth, and that every tongue should confess that Jesus Christ is Lord' (Phil. 2: 8-11); and 'all power is given unto me in heaven and in earth' (Matt. 28: 18). From this it is clear he held ordinary power throughout the whole world by merit of his death. The minor is proved because he gave this power to Peter without exception: 'Feed my sheep' (John 21: 16-17).

2. No non-Christian may withdraw himself from the jurisdiction of the pope. This follows from the proof of the first proposition.

3. The pope can at any rate punish pagans and barbarians for crimes which are manifestly against natural law, such as sodomy. This is

clear, because he is their judge; therefore he can compel them to keep this law, which they profess.

4. For crimes against divine law, however, he cannot punish them, despite being their judge, because they have not professed that law, nor can it be demonstrated to them by manifest proofs.

The same opinion is held by Agostino Trionfo, from whom my lord Antonino took it. And Silvestro Mazzolini da Priero follows it to the letter (*Summa Syluestrina*, s.v. papa §7), saying ‘they are the subjects of the pope simply (*simpliciter*): he can punish them for their manifest sins against the law of nature, but not if they break the Old or New divine laws, nor can he make them give up their rituals, even concerning marriage.’ And their punishment needs to be temporal, not spiritual, since they are outside the Church. And the same, he says, can be done by any prince over his pagan subjects.

Nevertheless, one might object against these propositions, it is strange that someone should be master as far as punishment is concerned, but not able to carry laws; yet according to these doctors the pope cannot impose any laws on the Saracens. Such power would be quite empty. If the pagans do not recognize his jurisdiction, they will not obey his temporal punishments; and they cannot be spiritually punished. So whence this limitation on the power given by Christ to the pope that stipulates, as far as pagans are concerned, that he is to execute only natural, not divine law? It is non-existent; there is no such distinction as they say between his powers in natural and divine law. The proof is the passage where Paul says: ‘I wrote unto you in my epistle to have no company with fornicators’, and so on down to ‘if any man that is named a brother be a fornicator, or covetous, or an idolater’, and so on (1 Cor. 5: 9–11); this is the passage that ends ‘for what have I to with judging them that are without?’. St Thomas concludes: ‘prelates have received power only over those who have subjected themselves to the faith’.

4. FOURTH CONCLUSION: *Christian princes cannot wage war on unbelievers on the grounds of their crimes against nature, any more than for other crimes which are not against nature.* For example, they cannot use the sin of sodomy, any more than the sin of fornication, as a pretext.

The proof is as above. First, fornication or theft is as much against natural law [as an unnatural act such as sodomy], and there is no reason why princes should be defenders of natural law any more than of divine law. The barbarians are, besides, obliged not to steal just as much as they are obliged not to practise homosexual acts. Furthermore, some crimes such as murder are more serious than any merely unnatural sin; why should it be right to war against unbelievers for sins against nature,

but not for other sins? Murder, after all, is self-evidently evil. Now by this argument the princes of non-Christians would have as much right to declare war on Christians who sin against nature. It is no excuse to reply that Christians at least hold these crimes in abomination; it is actually worse to commit a sin knowingly than to do so out of ignorance. The deduction is proved by the fact that Christians have no greater power over unbelievers than they do over Christians. And an untoward consequence of accepting that they could punish crimes against nature would be that the king of France has a perfect right to conquer Italy.²¹

5. FIFTH CONCLUSION: *Christian princes can declare war on the barbarians because they feed on human flesh and because they practise human sacrifice.*

The proof is as follows. First, if they eat or sacrifice innocent people, princes can defend the latter from harm, according to the passage: 'Deliver them that are carried away unto death, and those that are ready to be slain see that thou hold back' (Prov. 24: 11). They can defend themselves, therefore princes can defend them. It is no reply to argue that they neither seek nor wish this help; it is lawful to defend an innocent man even if he does not ask us to, or even if he refuses our help, especially when he is suffering an injustice (*iniuria*) in a matter where he cannot renounce his rights, as in the present case. No one can give another the right to kill him, whether it be to eat him or to sacrifice him. Besides, it is certain that the victims of these practices are often unwilling, for example children. It is therefore lawful to defend them. Hence, since it is a fact that these barbarians kill innocent men, at least for sacrifice, princes may wage war on them to force them to give up these rituals. Even if they sacrifice criminals to eat, they still commit an injustice (*iniuria*), since there is a law of nations (*ius gentium*), indeed a natural law, that the bodies of the dead are exempt from this injustice.

It follows that the reason why the barbarians can be conquered is not that their anthropophagy and human sacrifices are against natural law, but because they involve injustice (*iniuria*) to other men. This is clear from the preceding arguments. Hostiensis in his commentary on the decretal *Quod super his* (X. 3. 34. 8) holds that unbelievers who do not recognize the dominion (*dominium*) of the Church may be lawfully invaded according to the passage 'All power is given unto me in heaven and earth' (Matt. 28: 18); once they recognize it, and cease to act in a

21. Contemporary Spanish propagandists customarily used the Italians' reputation for sodomy to justify imperial interventions in Italy, particularly the Sack of Rome (1527). Vitoria's demonstration that the argument could equally well be used by their arch-rivals, the French, was therefore both pertinent and pleasingly sardonic.

hostile manner towards Christians, they cannot be despoiled of their property. The reason he alleges is that Christ transferred His power to His vicar; he adduces the canon *Si de rebus* (*Decretum* C.23. 7. 2) with its gloss. This conclusion is supported by Angelo Carletti da Chivasso in his *Summa Angelica*. But Innocent IV, in his commentary on the same decretal (in X. 3. 34. 8), holds that it is only lawful if they are aggressive, or if they commit some other crime against natural law; he adduces the canon *Dispar* (*Decretum* C.23. 8. 11).²² Silvestro Mazzolini da Priero follows Innocent (*Summa Sylvestrina*, s.v. infidelis §7); but it may be argued against Silvestro that he is contradicted by his previous admission, that the infidels are subject to the Church. If they are subjects but refuse to recognize the dominion (*dominium*) of their master, why can they not be compelled to recognize it, as Hostiensis asserts and Innocent denies?

6. SIXTH CONCLUSION: *if war is declared on the barbarians by this title, it is not lawful to continue once the cause ceases, nor to seize their goods or their lands on this pretext.*

This is clear *per se*. I assume that, even if the war is fought by just title, the belligerent does not thereby have the power to eject the enemy from their dominions (*dominium*) and despoil them of their property at whim; he can act only as far as is necessary to ward off injustices (*iniuriae*) and secure safety for the future. It follows that, if there is no other method of ensuring safety except by setting up Christian princes over them, this too will be lawful, as far as necessary to secure that end.

7. SEVENTH CONCLUSION: *there can be other reasons besides this title for declaring war on the barbarians.* For instance, if they refuse to receive preachers of the faith, or if they receive them but then kill them; or any other just causes of war. Of these I say nothing for the present, since it was not part of my intention to discuss this matter in all its ramifications, but to keep to the theme proposed; namely, whether it is lawful to feed on human flesh, and what can be done against the barbarians on this head.

8. EIGHTH CONCLUSION: *by whatever title war is begun on the barbarians, it is not lawful to take it further against them than we should take a war against Christians.* This is clear, because the justice of the war has nothing to do with their being unbelievers, as explained above, and by St

22. On these important canonistic texts, see further *On the American Indians* 2. 2, and the Glossary, s.v. *Quod super his*.

Thomas in *ST II-II. 10. 8.* It follows that, just as a Christian prince having just cause for war against another Christian does not immediately gain the right to depose the other from his principedom, so in the present discussion of a war against barbarians there is no immediate right to despoil them of their lordships and properties.

9. NINTH CONCLUSION: *by whatever just title a Christian prince becomes prince of pagans, he may compel them without provocation to accept the Christian law, and abolish any of their rituals which are unlawful, whether because unnatural or for any other reason.*

This is clear from the first and second conclusions. If their own popularly elected (*populares*) and natural princes have this power, there is no reason why Christian princes should not have it once they become their rulers. I mean 'their rulers' absolutely; if the prince becomes their ruler on certain conditions, the conclusion does not necessarily follow. If the Saracens, being in other respects free, are compelled by the Christians in a just war to accept a Christian prince on the condition that they are allowed to keep their own rituals, then, as I say, the prince could not compel them to give up their own rituals and accept ours, because in this respect they would not be his subjects. He would have no power beyond what they had given him.

10. TENTH CONCLUSION: *However legitimate the suzerainty a Christian prince may acquire over pagans, he cannot put greater burdens on them than on his Christian subjects, either by imposing heavier taxes or by depriving them of their liberties or by any other form of oppression.*

This is clear, because the fact of their unbelief gives him no greater power over them than over the remainder of his Christian subjects.

11. ELEVENTH CONCLUSION: *a prince who obtains sovereignty over them is obliged to make suitable laws for their commonwealth also in temporal matters, so that their temporal goods are protected and increased, and they are not despoiled of their wealth and gold.*

This is clear, because princes are obliged to take measures for the temporal good of the commonwealth. It obviously follows that in this respect they should not be guided by consideration of the interests of their other subjects, but only by the interests of that particular commonwealth. That commonwealth is not a part of the other, nor subordinate to it. If a king of their own race did not make suitable laws for their benefit, it would be a deliberate dereliction of duty and act of bad faith; a foreign king is bound to do no less; *ergo*.

It follows from this that if it is in the interests of that commonwealth to prevent the export of gold out of the kingdom, the prince would do wrong to allow it.²³ This is clear from what has been said above, and confirmed by analogy: if the king were to permit gold to be exported from Spain to Italy, he would act wrongly. The same must therefore hold of the Indies, in the absence of any other reasonable cause.

12. TWELFTH CONCLUSION: *if it is in the interests of the barbarians to mint coinage, the king is wrong not to allow it or to prohibit it.*

This is clear because he would be obstructing the well-being of the commonwealth. In sum, whatever the king is obliged to do for the well-being of his own homeland, he is also obliged to do for the barbarians under his rule, even if they did not have the benefit of it before, through ignorance or any other reason. And whatever a native Christian prince would be obliged to do, if he were elected (*popularis*) and the populace were Christian, a Christian prince is also obliged to do.

13. THIRTEENTH CONCLUSION: *it is not sufficient for a prince to give the barbarians good laws; he must also set ministers over them to ensure observance of the laws.* And until this is achieved, the king, or rather his counsellors who are responsible for the administration of these affairs, cannot rest secure in conscience. In the end, the barbarians may say to their Christian prince, rather as the Scythians are supposed to have said to Alexander: 'If you are not our king, who made you our judge? But if you are our king, your duty is to increase your possessions by adding to your subjects' well-being, not by depriving them of what is theirs.'

BUT CONCERNING THE FIRST AND SECOND CONCLUSIONS, it should be noted that one of the conditions of a law is that it should be tolerable and reasonable. It is not sufficient that it should be well-intentioned; a law which prohibits perjury or simple fornication under pain of death, for instance, is not tolerable.

Applying this principle to the present case, although a legitimate prince may enact laws to abolish the unbelief and rituals of pagans and to introduce Christianity, this must be done reasonably and in a tolerable manner, without undue violence or oppressive measures against the subjects. It would not be a tolerable law if an edict was suddenly to be published forbidding the worship of Muhammad or of idols or demanding the worship of Christ on pain of death, or even on pain of exile or

23. Compare *On Civil Power* 3, 2, footnote 66.

confiscation of goods.²⁴ Pains must first be taken to instruct and teach them of the empty falsehood of their law and rituals; by industrious effort they are to be induced to listen to the holy law of Christ, by reasoning brought to see its probability and the improbability of the law under whose deceptions they lead their lives. It will even be lawful to apply a little force, in moderate doses, to get them to abandon their rituals. Only after all this can a law be passed banning idols and abolishing Muslim rites; and then not by rigorous penalties such as death or exile, but with more lenient measures, since it would be an intolerable law which forced a man to desert the religion of his forefathers under some atrocious penalty.

SECOND AND MOST IMPORTANTLY, care should be taken to avoid provoking unrest, not only among the barbarians themselves but also among other peoples. One not inconsiderable argument among many for the Christian religion is the freedom of choice which it has always given to potential converts: it has never used force with unbelievers, but always reasoning and proofs. This glorious reputation would be tarnished if we were to start forcing men to accept the law of Christ.

A THIRD THING TO NOTE and consider well is the practical outcome of the affair. If these laws give a real hope of converting the pagans truly, not merely in appearance, they deserve to be enacted. If, on the other hand, there are grounds to fear resistance, and no benefit to follow but only persecution and confiscation of their goods, thus fuelling greater hatred for the Christian religion, the law should not be passed, however useful potentially, because law must concern the good of all. If it is difficult to avoid untoward consequences of this kind, it is better to observe the usual custom of the Church, which has been never to force unbelievers to accept the faith – so long as we understand that this is the practice, not because it is unlawful *per se*, but because it is not expedient, according to the Apostle's advice: 'all things are lawful unto me, but all things are not expedient' (1 Cor. 6: 12). But certainly, if pagans would willingly give up their rituals without public unrest at a simple command from a prince, I see no reason why the king should not make such an edict.

Against Antonino of Florence, Agostino Trionfo, Silvestro Mazzolini da Priero, and Innocent IV, it can be argued that the Church either has dominion (*dominium*) over non-Christians, or it does not. If it does not, then it cannot punish them for their crimes, however unnatural they may be. If it does have dominion (*dominium*) but they refuse to recognize it, then it can invade them without any further pretext, even if they have

24. For further discussion of this point, compare Appendix B, pp. 341–51 (especially at footnotes 3, 9).

not committed any crimes. In this case, the Church can simply conquer all lands belonging to unbelievers, and there is no need to seek excuses in their unnatural crimes. Consequently, Hostiensis makes a better case than Innocent and his followers. This is confirmed, because once they have committed their sins against nature, if the pope decides to punish them, they are either obliged to suffer this punishment, or not. If they are, this contradicts the opinion of the afore-mentioned doctors, being as it is a matter of positive divine law, since they argued that unbelievers cannot be punished unless they can be convinced by manifest proofs: but the pope's right in this matter, namely that he is the vicar of Christ, is a supernatural one, and cannot be proved by any natural reason, just as one cannot prove that God was made man. It is strange that unbelievers should be obliged to believe the first of the propositions rather than the second; that they should be subject to punishment for refusing to accept the pope, not for refusing to accept Christ. But by these authors' professions they cannot be punished. Again, if their reasoning is that unbelievers cannot be convinced of matters of faith, and therefore cannot be punished on these grounds, their argument is false, because they can be convinced. A person is said to be convinced not when something becomes self-evident to him, but when he has no probable answer to refute it and can no longer use the excuse of ignorance. And this is how unbelievers can be convinced that the Christian faith is true.

Finally, when they say that they can be punished for 'sins against nature', what do they mean: specifically sins against the natural order and against instinct such as sodomy and anthropophagy, or generally sins of any kind against natural law? If the former, we may counter by saying that unbelievers can be convinced just as well, or indeed better, of the evil of murder or perjury as they can of the evil of sodomy. But if our opponents use the term in the general sense, of any sin against natural law, this is nothing more than a fraudulent calumny concocted to justify persecuting non-Christians; for it is certain that even among the faithful there are some crimes against natural law, like fornication and usury, which always enjoy a certain license. So there is no need of all their great show of examining consciences; they may as well say it is lawful to wage war on all unbelievers and be done with it. Surely it would be strange that fornication should be winked at in Christian society, but used as an excuse for conquering the lands of unbelievers! This opinion has no solid foundation whatever.

*The End*²⁵

25. *Actos Finis* : *LS* continue with the remainder of the relection (articles on the Carthusian diet, etc.).

ON THE AMERICAN INDIANS
(*De Indis*)

This, the first of the two relections on the 'affair of the Indies', was written for the academic session 1537-8, but was not delivered until January 1539.¹ Juan de Heredia, the copyist of this portion of P, gave the relection no title. From his introduction, it is clear that Vitoria began the lecture as a further discussion of forcible baptism (see the lectio on ST II-II. 10. 8, Appendix B), with particular application to the Indians. In the event, however, he delivered only the first of the three parts promised in the divisio, the one dealing with the Spanish titles to the conquest of America. The second instalment of the relection, On the Law of War, delivered a few months later, did not directly address the two remaining parts (though Vitoria's answer to the question of forcible baptism is deducible from 3. 1 §10 in that work).

The copyist Heredia paired the two relections and described both, in the colophon to On the Law of War, as De Indiis ('On the Indies'). A later hand added the more accurate heading De bello contra Indos ('On the War against the Indians') at the head of the first folio; this is the origin of the title by which the relection is now known (see footnote 2).

In addition to the usual notes of variant readings from LS, there are also some references in the critical apparatus to G, fols. 445-62 (reproduced in Vitoria 1933-5: II. 519-29). This MS is essentially a witness of the Second Recension, but is, in critical terms, a 'contaminated text': that is, it preserves some original readings from the First Recension which show that its copyist was working from an exemplar independent of the tradition represented by the printed editions (see, for example, footnotes 15, 19, 32). For this reason, the places where it agrees with P against LS are invaluable indications of authentic readings in Vitoria's original, before the editors of

1. This explains why the date is given in MS G (fol. 445) as 1538, and in P (fol. 124) as 1539; for a full discussion see Beltrán de Heredia 1928, 132-53.

the printed versions interfered with the text. The critical edition in the Corpus Hispanorum de Pace series (Vitoria 1967) contains a valuable apparatus of variants, and notes on sources; Barbier's commentary is indispensable for the doctrinal background (Vitoria 1966).

RELECTION OF THE VERY REVEREND FATHER
FRIAR FRANCISCO DE VITORIA,
MASTER OF THEOLOGY AND MOST WORTHY PRIME
PROFESSOR AT THE UNIVERSITY OF SALAMANCA,
DELIVERED IN THE SAID UNIVERSITY, A.D. 1539²

THE TEXT TO BE RE-READ is 'Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost' (Matt. 28: 19). This raises the following problem: *whether it is lawful to baptize the children of unbelievers against the wishes of their parents?* The problem is discussed by the doctors on Lombard's *Sentences* IV. 4. 9, and by Aquinas in *ST* II-II. 10. 12 and III. 68. 10.

This whole dispute and relection has arisen again³ because of these barbarians in the New World, commonly called Indians, who came under the power of the Spaniards some forty years ago, having been previously unknown to our world.

My present discussion of these people will be divided into three parts: first, by what right (*iur*) were the barbarians subjected to Spanish rule? Second, what powers has the Spanish monarchy over the Indians in temporal and civil matters? And third, what powers has either the monarchy or the Church with regard to the Indians in spiritual and religious matters? The conclusion to the last question will thus lead back to a solution of the question posed at the outset.

[Introduction: Whether this dispute is justified]

AS FOR THE FIRST PART, it may first of all be objected *that this whole dispute is unprofitable and fatuous*, not only for those like us who have no

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2. De bello ~~contra Indios~~ *add. in marg.* The title is given in *G* as 'Relectio de Indiis a Victòria anno 1538'; in *L* as 'De Indis insularis prior', and in *S* as 'De Indis recenter inventis relectio prior'.
 3. The controversy dated back to 1513 (see Introduction, pp. xdi), but had recently been renewed by Paul III's bull *Sublimis Deus* (see the Glossary, s.v.), which likewise took Matt. 28: 19 as its *thema*. Vitoria himself had referred to the problem of the evangelization of the Indians in his 1534-5 lectures on *ST* II-II. 10. 8 (see Appendix B. §3, footnote 33), while his colleague Domingo de Soto wrote a repetition *On the Right Way of Preaching the Gospel* at about this time, now apparently lost (Hamilton 1963: 179), which may also be referred to here.

warrant to question or censure the conduct of government in the Indies irrespective of whether or not it is rightly administered, but even for those whose business it is to frame and administer that government:

1. Neither the princes of the Spains nor the ministers of their royal Councils are obliged to justify anew rights and titles which have already been deliberated and judged, especially since the territories in question are occupied in good faith and are now held in pacific possession by the Spanish Crown. As Aristotle says in the third book of the *Nicomachean Ethics* (1113^a2–3), 'if we are to be always deliberating, we shall have to go on *ad infinitum*', so no prince or his ministers will ever be able to rest easy in their consciences. If the titles of rule had always to be proved by going back to the seeds of time, no tenure could ever be fully established.

2. Our princes Ferdinand and Isabella, who first occupied the Indies, are known as 'most Catholic Monarchs', and Emperor Charles V is officially entitled 'most righteous and Christian prince'. Are we to suppose that princes such as these would fail to make the most careful and meticulous inquiries into any matter to do with the security of their estate (*status*) and conscience, especially one of such importance? Of course not; further cavils are unnecessary, and even insolent.⁴

But for the solution of this objection we must consider further the argument of Aristotle in the third book of his *Nicomachean Ethics*. Aristotle means that, just as deliberation is impossible in matters which concern events due to chance or natural phenomena, so too moral deliberations may be considered impossible in cases of indisputable lawfulness and goodness or indisputable unlawfulness and evil.⁵ That is to say, no one should debate whether a life of courage, temperance, and justice is better than a life of injustice, infamy, adultery, and so on.⁶ Such deliberation would at any rate be un-Christian.

But where there is some reasonable doubt as to whether an action is good or bad, just or unjust, then it is pertinent to question and deliber-

4. LSG interpolate: 'It seems like looking for knots on a rush, this searching for iniquity in the house of the righteous.' The old Latin proverb *quaerere nodum in scyrpo* (Plautus, *Menaechmi* 247; Terence, *Andria* 941) meant to make a mountain out of a molehill.

5. *Nicomachean Ethics* 1112^a18–1113^a14. Aristotle defines as 'impossible to deliberate' matters which are beyond control or choice because caused by chance (like a windfall of treasure), or by natural necessity (like the weather). He does not infer the existence of any moral issue which he considers to be 'impossible to debate', as Vitoria does, though he states that deliberation can only be about means, not ends.

6. LSG add 'perjury and insults, or whether one should respect one's parents'.

ate, rather than acting rashly without any prior investigation of what is lawful and what is not. These things which have both good and bad on both sides are like many kinds of contracts, sales, and other transactions; if undertaken without due deliberation, on the mere assumption that they are lawful, they may lead a man into unpardonable wrongdoing. In that case a plea of ignorance will be invalid; it is obvious that the man's ignorance was not invincible, since he failed to do everything he could to consult beforehand what was lawful or not.

It follows that for an action to be good in cases where a person has no other means of certainty, it is a necessary condition that he act in accordance with the ruling and verdict of wise men. This is defined as one of the necessary conditions of a good action in the second book of the *Nicomachean Ethics* (1106^b36 - 1107^a2);⁷ hence a person who does not consult wise men in cases of doubt can have no excuse. Furthermore, even when the action is lawful in itself, whenever reasonable doubts arise about its lawfulness in a particular case recourse must be had to the opinion of wise men, and their verdict must be followed, even though they may judge wrongly. Thus, if a man fails to consult the experts about a contract of doubtful legality, he undoubtedly acts wrongfully. It makes no difference whether or not the contract is legal in itself; if he believes it to be legal merely on his own whim and judgment, and not on the authority of the wise, he acts wrongly. Similarly, if a man does consult wise men on a doubtful case, and then disregards their verdict, he acts wrongly, even if the action is in itself lawful.

Take the example of a man who is uncertain whether he is legally married to a particular woman. A doubt arises: is he bound to perform his conjugal duty with the woman? May he lawfully do so, if he wishes? Or indeed, may he demand her to perform it with him? He consults the experts; the answer is an emphatic negative. Nevertheless, the man decides on his own authority to disregard their verdict from love of the woman. Now in this case the man certainly commits a sin by having intercourse with the woman, even if it is in fact lawful, because he is acting wilfully against conscience. It must be so, because in matters which concern salvation there is an obligation to believe those whom the Church has appointed as teachers, and in cases of doubt their verdict is law. Just as a judge in a court of law is obliged to pass sentence according to the evidence presented, so in the court of conscience every man must decide not according to his own inclination, but by logical

7. The argument seems to be based on a misinterpretation of the sentence: 'Excellence is a state concerned with choice . . . determined by reason and in the way in which the man of practical wisdom would determine it'.

arguments or the authority of the learned. To do otherwise is impudent, and exposes one to the danger of sin, which is itself sinful.⁸ Hence the Old Testament teaches us (Deut. 17: 8–11):

If there arise a matter too hard for thee in judgment, between blood and blood, between plea and plea, and between stroke and stroke, being matters of controversy within thy gates; then shalt thou arise, and get thee up into the place which the Lord thy God shall choose; and thou shalt come unto the priests the Levites, and unto the judge that shall be in those days, and enquire, and they shall shew thee the sentence of judgment. And thou shalt do according to the sentence of the law which they shall teach thee, and according to the judgment which they shall tell thee, thou shalt do: thou shalt not decline from the sentence which they shall shew thee, to the right hand, nor to the left.

So in doubtful cases, I say, we must consult those whom the Church has appointed for the purpose: that is, the prelates, preachers, confessors, and jurists versed in divine and human law, since in the Church 'God hath set the members every one of them in the body as it hath pleased him', some the feet and some the eyes, and so on. (1 Cor. 12: 18); He 'gave some apostles, and some prophets, and some evangelists, and some pastors and teachers' (Eph. 4: 11). And it is written: 'the scribes and the Pharisees sit in Moses' seat: all therefore whatsoever they bid you observe, that observe and do' (Matt. 23: 2–3). So too Aristotle exhorts us in the first book of the *Nicomachean Ethics* with these lines from the poet Hesiod:

He who neither knows, nor lays to heart
Another's wisdom, is a useless wight.⁹

Therefore it is not enough in conscience for a man to judge by himself whether his actions are good or bad. In cases of doubt he must rely on the opinion of those authorized to resolve such doubts. It is not sufficient for businessmen merely to abstain from those contracts which they know to be illegal, if at the same time they continue to make contracts of dubious legality without consulting the experts.

For this reason I disagree with Cardinal Zabarella's affirmation that, if a certain thing which is in fact a venial sin comes to judgment, but

8. Vitoria's probabilism, as discussed here, was dependent on the position of Aquinas (*Quodlibet* 8. 3) and on Torquemada. He discussed the subject of the probable claims of conscience at greater length in his lectures on Lombard's *Sentences* IV (Vitoria 1567), and *In ST* II-II. 47. 4 (Vitoria 1932–52: II. 358–9); compare *On the Law of War* 2. 3.

9. *Works and Days* 295–6, quoted at *Nicomachean Ethics* 1095^b10.

all the preachers and confessors who are authorized to judge such matters declare it to be unlawful or pronounce it to be a mortal rather than a venial sin, a person who as a result of his own inclination disregards their verdict and decides in his own conscience that the act is not mortally sinful may perhaps not be committing a sin. The example he gives is the use of cosmetics and other superfluous adornments by women. In point of fact, their use is a venial sin; and if the preachers and confessors pronounce it a mortal sin, the woman who ignores their opinion, convinced by her own craving to prettify herself into believing that the practice is lawful or at most a venial sin, would not in the Cardinal's view be committing a mortal sin by painting herself in this manner. But in my view this is a dangerous principle. Women are obliged to obey the experts in all matters necessary to salvation, and they place themselves in danger of damnation if they commit acts which in the opinion of wise men are mortal sins.

Conversely, therefore, anyone who has first consulted wise men on a doubtful course of action, and has obtained a verdict that it is lawful, may subsequently undertake that course of action with a clear conscience, at least until such time as an equally competent authority pronounces a conflicting opinion which reopens the case, or leads to a contrary verdict. Here, at any rate, the transgressor's innocence is clear, since he did everything in his power to act lawfully, and his ignorance was therefore invincible.

From all this, we may deduce the following propositions:

- §1 **FIRST**, in every case of doubt there is a duty to consult with those competent to pronounce upon it, since otherwise there can be no security of conscience, regardless of whether the action concerned is really lawful or unlawful.
- §2 **SECOND**, if the upshot of the consultation with wise men is a verdict that the action is unlawful, their opinion must be respected; and anyone who disregards it has no defence in law, even if the action is in fact lawful in itself.
- §3 **THIRD**, if on the other hand the verdict of the wise is that the action is lawful, anyone who accepts their opinion may be secure in his conscience, even if the action is in fact unlawful.

TO THE FIRST, returning to this business of the barbarians, we may reply that the matter is neither so evidently unjust of itself that one may not question whether it is just, nor so evidently just that one may not wonder whether it might be unjust. It seems rather to have arguments on both sides. At first sight, it is true, we may readily suppose that, since the

affair is in the hands of men both learned and good, everything has been conducted with rectitude and justice. But when we hear subsequently of bloody massacres and of innocent individuals pillaged of their possessions and dominions, there are grounds for doubting the justice of what has been done.¹⁰ Hence it may be concluded that *disputation is not unprofitable*, and the objection is answered.

Furthermore, even if the objection that this question admits of no doubt were granted, it is not unusual in theology to debate questions whose answer is certain (*de re certa*). After all, we admit debates on the Incarnation of Our Lord and other articles of faith. The reason is that not all theological disputations are of the deliberative kind. Frequently they are *demonstrative* – that is, undertaken not to argue about the truth, but to explain it.

But if anyone objects that, even if there was once some doubt about this business, it has long since been discussed and settled by wise men, and matters fully arranged according to their verdict, so that further deliberation is unnecessary, my first reply is: 'if so, blessed be the Lord!' My lecture does not seek to imply the contrary, and I have no desire to stir up fresh contentions. And second, I say that it is not the province of lawyers, or not of lawyers alone, to pass sentence in this question.¹¹ Since these barbarians we speak of are not subjects [of the Spanish Crown] by human law (*iure humano*), as I shall show in a moment, their affairs cannot be judged by human statutes (*leges humanae*), but only by divine ones, in which jurists are not sufficiently versed to form an opinion on their own. And as far as I am aware, no theologian of note or worthy of respect in a matter of such importance has ever been called upon to study this question and provide a solution. Yet since this is a case of conscience, it is the business of the priests, that is to say of the Church, to pass sentence upon it. So it is written of the king 'that it shall be, when he sitteth upon the throne of his kingdom, that he shall write him a copy of the Law out of that which is before the priests the Levites' (Deut. 17: 18). And third, even if the principal question has been sufficiently examined and resolved, in so great a matter there may yet remain particular matters of doubt which merit some clarification.

In conclusion, I should regard it as something not unprofitable and fatuous, but an achievement of considerable worth, if I were to succeed in treating this question with the seriousness which it deserves.

10. Compare Vitoria's comments to Miguel de Arcos on the conquest of Peru in Appendix A1.

11. For the significance of this assertion see Pagden 1986: 66–7.

[Question 1: On the dominion of the barbarians]

§4 Returning to the question, therefore, and proceeding in due order, I shall first ask:

Question 1, Article 1: Whether these barbarians, before the arrival of the Spaniards, had true dominion, public and private?

That is to say, whether they were true masters of their private chattels and possessions, and whether there existed among them any men who were true princes and masters of the others. It may seem in the first place that they have no right of ownership (*dominium rerum*):

1. 'A slave cannot own anything as his own' (*Institutions* II. 9. 3 *Item vobis*; *Digest* XXIX. 2. 79 *Placet*). Hence everything a slave acquires belongs to his master (*Institutions* I. 8. 1 *Nam apud omnes*). But these barbarians are slaves by nature.¹² This last point is proved by Aristotle, who says with elegant precision: 'the lower sort are by nature slaves, and it is better for them as inferiors that they should be under the rule of a master' (*Politics* 1254^b20).¹³ By 'lower sort' he meant men who are insufficiently rational to govern themselves, but are rational enough to take orders; their strength resides more in their bodies than in their minds (1252^a32). And if indeed it is true that there are such men, then none fit the bill better than these barbarians, who in fact appear to be little different from brute animals and are completely unfitted for government. It is undoubtedly better for them to be governed by others, than to govern themselves. Since Aristotle states that it is a natural law that such men should be slaves, they cannot be true masters. Furthermore, it is no objection to argue that before the Spaniards arrived the barbarians had no other masters; it is not impossible that a slave may be a slave even without a master, as stated by the *Glossa* on the law *Si usum fructum* (*Digest* XL. 12. 23); indeed, the law concerned expressly says so, and there is an actual case adduced in the law *Quid seruum* (*Digest* XLV. 3. 36 *pr.*) on the unclaimed slave abandoned by his master, which shows that such a slave may be appropriated by anyone. Therefore, if the barbarians were slaves, the Spaniards could appropriate them.

12. *P* natura / hereditate in marg. om. LSG.

13. 1^o ethicorum PGL, om. S. For an extended discussion of Vitoria's reading of Aristotle's theory of natural slavery in this article, see Pagden 1986: 67–78.

§5 BUT ON THE OTHER HAND it may be argued that they were in undisputed possession of their property, both publicly and privately. Therefore, failing proofs to the contrary, they must be held to be true masters, and may not be dispossessed without due cause.

I REPLY that if the barbarians were not true masters before the arrival of the Spaniards, it can only have been on four possible grounds. To avoid wasting time, I omit any recapitulation here of the many writings of the theologians on the definition and distinctions of dominion (*dominium*), which I have quoted at length elsewhere (see my discussion of restitution in my lectures on Lombard's *Sentences* IV. 15 and *ST* II-II. 62).¹⁴ These four grounds are that they were either sinners (*peccatores*), unbelievers (*infideles*), madmen (*amentes*), or insensate (*insensati*).

[Question 1, Article 2: Whether sinners can be true masters]

There have been some who have held that the title to any dominion (*dominium*) is grace, and consequently that *sinners, or at least those who are in a state of mortal sin, cannot exercise dominion over anything*. This was the heresy of the Poor Men of Lyon or Waldensians and later of John Wycliff, one of whose errors condemned by the Council of Constance was: 'No one is a civil master while he is in a state of mortal sin.' The same opinion was enunciated by Richard Fitzralph, archbishop of Armagh, in his *Summa in quaestionibus Armenorum* 10. 4 and in his dialogue *De paupertate Christi*.¹⁵ Fitzralph claims that any such dominion (*dominium*) held by a sinner is condemned by God, adducing the verse 'They have set up kings, but not by me; they have made princes, and I knew it not', and adding as explanation the next phrase: 'of their silver and their gold have they made them idols' (Hos. 8: 4). It follows that such men lack any just dominion in the eyes of God:

14. Lombard's treatment of *restitutio* (*Sent.* IV. 15) was the standard occasion for theologians' discussions of *dominium*; it was the *thema*, for instance, of Soto's important relection *De dominio* (1534), which is preserved in MS *P*, fols. 232–41. As usual, Vitoria refers to the corresponding passage in Aquinas' *ST* II-II. 62. 1 (for his commentary on the latter see Vitoria 1932–52: III. 63–7).

15. *De paupertate Christi: de fensionum parte*¹ *P* defensionum *G* Defensorium pacis *LS*. The reading adopted here is suggested by Barbier (Vitoria 1966: 16 n.), on the basis of the parallel passage in *On Civil Power* 1. 6. After this sentence *S* inserts an interpolation: 'against whom wrote Walden, *De antiq.* 1. 3. 82–3, II. 3'; but the reference to Thomas Walden's *Doctrinale antiquitatum* should apparently read I. 2. 3. 81–3 and II. 3.

1. It is axiomatic that every dominion (*dominium*) exists by God's authority, since He is creator of all things and no one may have such dominion unless he is given it by God; but it is not logical that He should give such dominion to those who sin disobediently against His precepts. Human princes do not give their goods or demesnes to rebels; or, if they turn out to have done so, they take them away again. We should judge the divine according to the human (Rom. 1: 18-20). Hence God does not grant dominion to the disobedient.

2. As a sign of this He sometimes casts the wicked down from their dominion, as he did Saul (1 Sam. 15-16), Nebuchadnezzar, and Belteshazzar (Dan. 4, 5).

3. It is also written: 'Let us make man in our image, after our likeness; and let them have dominion over the fish of the sea and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth' (Gen. 1: 26). From this it is clear that dominion (*dominium*) is formed in the image of God; but the image of God is not in the sinner, hence the sinner cannot have such dominion.

4. The sinner commits the crime of lese-majesty, and therefore deserves to lose his dominion.

5. Augustine says that the sinner is not worthy of the bread which he eats; even less will he be worthy, therefore, of dominion.

6. God gave the dominion of Paradise to our first parents Adam and Eve, and then deprived them of it because of their sin; *ergo*, etc.

True, neither Wycliff nor Fitzralph make the necessary distinctions; they appear to refer solely to jurisdiction (*dominium jurisdictionis*) or lordship. But since their argument is no less applicable to all types of ownership (*dominium rerum*), public and private, it is clear that they intended their conclusion to apply to dominion (*dominium*) in general. That at any rate is what Fitzralph clearly says, and that is the sense in which Conrad Summenhart took their conclusion (*Septipertitum opus de contractibus* I. 7). Therefore anyone who accepts this conclusion may argue that the barbarians were not true masters because they were continually in a state of mortal sin.

§6 BUT ON THE OTHER HAND, *mortal sin is no impediment to the civil right of ownership, nor to true dominion*. This was one of the propositions determined by the Council of Constance.

I REPLY that Almain's attempt in his commentary on Lombard's *Sentences* (in IV. 15 §2) to prove the proposition using an argument taken from

d'Ailly is insufficient.¹⁶ He adduces the quandary of the starving man in a state of mortal sin: deprived of the right of ownership, the man is obliged to eat to survive, but forced to steal to eat, which of course is a mortal sin; therefore he is caught in a vicious circle, and cannot avoid mortal sin. The argument fails for three reasons: first, because Fitzralph and Wycliff appear to be speaking of civil, not natural dominion (*dominium*); second, because the conclusion is false, since in cases of necessity it is permissible to steal; and third, because there is no vicious circle, since the man may repent.¹⁷ Hence Almain's argument is invalid, and one must reply with different arguments:

TO THE FIRST ONE MAY SAY that if the sinner had no civil ownership (*dominium civile*), which is what our adversaries seem to be talking of, then it follows that he would have no natural dominion (*dominium naturale*). But this consequence is false, as I can prove as follows: natural dominion (*dominium*) is a gift of God just as a civil ownership is, or indeed even more so, since civil ownership clearly belongs to human law,¹⁸ therefore if a man were to lose his civil ownership by offending God, by the same reasoning he would lose his natural dominion; but the proof that this is false is that the sinner does not lose his dominion (*dominium*) over his own acts and body.¹⁹ *Ergo*, etc.

TO THE SECOND, Scripture frequently gives evil sinners like Solomon, Ahab, and others the title 'king'. No one can be a king without having the right of jurisdiction (*dominium jurisdictionis*). *Ergo*, etc.

TO THE THIRD, the opponents' argument that all dominion (*dominium*) is formed in the image of God may be turned round on itself: for man is the image of God by his inborn nature, that is by his rational powers. Hence he cannot lose his dominion by mortal sin. The minor premiss is proved by Augustine, *De trinitate* 9 and by the theologians.

TO THE FOURTH, David continued to call Saul lord and master even when Saul was persecuting him (1 Sam. 26: 9). Indeed, David himself occasionally sinned, but he did not lose his kingship as a result.

TO THE FIFTH, it is written: 'The sceptre shall not depart from Judah, nor a lawgiver from between his feet, until Shiloh come' (Gen. 49: 10). Yet many kings have been evil. *Ergo*, etc.

16. Almain's argument was foreseen, and refuted, by Fitzralph.

17. For a discussion of Vitoria's argument at this point see Pagden 1987: 83–4.

18. That is to say, civil rights derive from human positive law, and human law in turn derives from natural law (see Pagden 1981a: 159), so that a natural right is anterior to a civil right.

19. LS (but not G) add: 'for the sinner retains the right of self-defence'.

TO THE SIXTH, mortal sin does not deprive a man of spiritual jurisdiction; hence it cannot deprive him of his civil property (*dominium rerum*), for this depends much less on Grace than spiritual jurisdiction. The antecedent premiss is self-evident, for it is a fact that bad priests consecrate the eucharist, and bad bishops consecrate priests. It is true that Wycliff denies this, but it is admitted by Fitzralph.²⁰

FINALLY, it is wholly improbable, in the light of the precept 'Be subject to your masters [with all fear; not only to the good and gentle, but also to the froward]' (Rom. 13:1; 1 Pet. 2: 18) and the commandment against stealing, that God should have wished it to be uncertain who the true lords and masters are. In conclusion, therefore, the initial proposition is manifestly heretical. For the Lord maketh his sun to rise on the evil and on the good, and sendeth rain on the just and on the unjust (Matt. 5: 45), and so too he gives his temporal goods to the good and the bad. My discussion of this article has not been provoked by any doubt on this score, but only to teach us recognize all heretics from the indictment of this one lunatic heresy.²¹

§7 [Question 1, Article 3: Whether unbelievers can be true masters]

We must now discuss of *whether a man can be deprived of dominion by reason of being an unbeliever*. On the one hand, it seems that he can:

1. Heretics can have no dominion (*dominium*), so unbelievers, who are no better than heretics, can have no dominion either. The major premiss is clear from the decretal *Cum secundum leges* (Sext 5. 2. 19), which warns that the goods of heretics are to be confiscated *ipso iure*.²²

20. It is not clear that this counter-argument is intended specifically to answer the sixth ground above (on God's depriving Adam and Eve of Paradise), unless some allegorical interpretation of Paradise as *potestas spiritualis* is envisaged. By 'spiritual jurisdiction' is meant the priest's right to administer the sacraments. The challenge to the authority of the Catholic Church on the grounds of the sinfulness and abuses of its human ministers lay at the root of every heretical and protestant movement for reform; hence Vitoria does not trouble to defend, or even to explain, the Church's orthodox position here.

21. The citation of Matt. 5: 45 in this connexion had been traditional since Innocent IV's commentary on *Quod super his* (see the Glossary, s.v.). Vitoria had already, and at greater length, rejected the Wycliffite definition of *dominium* in his commentary on ST II-II. 62. 1 (Vitoria 1932–52: III. 105–11).

22. For Vitoria's use of canonistic literature in this article, and his refutation of it by theological arguments, see Muldoon 1968.

I REPLY with the following propositions:

1. *It is no impediment for a man to be a true master, that he is an unbeliever.* This is the conclusion of St Thomas Aquinas, *ST II-II. 10. 10.*

This can be proved first by authority, from Holy Scripture, which often calls unbelievers such as Sennacherib, Pharaoh, and others 'kings';²³ Paul (Rom. 13: 1–5) and Peter (I Pet. 2: 13–14, 18) gave orders to obey the rulers, who in their day were all unbelievers, and ordained that servants should obey their masters; Tobit ordered a kid to be returned to the pagans because he thought it was stolen (Tobit 2: 11–14), which he would not have done if the pagans had no right of ownership (*dominium*).

We have also a proof based on reason. Aquinas shows that unbelief does not cancel either natural or human law, but all forms of dominion (*dominia*) derive from natural or human law; therefore they cannot be annulled by lack of faith.

Hence the objection is a manifest error, like the preceding one, and heretical too.²⁴ It is clear that it is not lawful to take away the possessions of Saracens, Jews, or other unbelievers on the grounds of their unbelief *per se*; to do so is theft or robbery, no less than it would be in the case of Christians. Joseph made all the land of Egypt pay tribute to Pharaoh, who was an unbeliever (Gen. 47: 20).

§8 2. Since the case of heretics is specially difficult, let us add a further proposition: that *under divine law a heretic does not forfeit his right of ownership (dominium bonorum).* This principle is well known, and agreed by all; since the forfeiture of one's possessions is a punishment, and since divine law prescribes no punishment for this state (*pro isto statu*), it follows that under divine law a man cannot be deprived of his possessions on the grounds of heresy. Furthermore, this proposition is deducible from the first proposition: if dominion (*dominium*) is not forfeited on the grounds of unbelief, neither can it be forfeited on the grounds of heresy, since divine law makes no special provision for heresy in this sense.

§9 But the question remains, whether a heretic forfeits dominion in human law? On one hand, Conrad Summenhart appears to hold that a heretic *ipso facto* loses ownership of his goods (*dominium bonorum*), and thus forfeits dominion in the court of conscience (*Septiperitum opus de contractibus* I. 7. 2–3). From this, Summenhart infers that a heretic may

23. LSG here insert an extra proof, based on *ST II-II. 34. 2 ad 2* ('because hate of God is worse than unbelief, and yet such hate, etc.').

24. et est hereticum *om. S.* LS place the proof about Joseph at the end of this paragraph higher up, after Tobit.

not alienate his possessions; if he does, the transaction is null. He adduces as proofs the decretal *Cum secundum leges* (Sext 5. 2. 19), where Pope Boniface VIII formulates the premiss that the perpetrator of any crime against the laws *ipso facto* loses his right of ownership (*dominium rerum*), and expressly states that this applies to cases of heresy. Johannes Andreae seems to be of the same opinion in his commentary on this decretal, and the same view is held in *Codex* I. 5. 4 §3, where heretics are forbidden to sell, donate, or make any form of contract concerning their possessions. We may also adduce Aquinas' argument in *ST* I-II. 96. 4, which teaches that laws impose an obligation in conscience.²⁵

§10 To answer this let us make the following further propositions:

3. *A heretic incurs the punishment of confiscation of goods from the day of the commission of his crime.* This is the common view of the theologians (see the determination in Eimeric, *Directorium inquisitorum* 3. 109, and Baptista Trovamala, *Summa casuum*, s.v. absolutio §17; it seems also to be the conclusion of *Cum secundum leges* (Sext 5. 2. 19) and *Codex* I. 5. 4 §3.

§11 4. *Even though the crime has been committed, nevertheless confiscation cannot take place until the heretic has been duly convicted.* This again is admitted by all the theologians, and is the determination in *Sext* 5. 2. 19. Indeed, it would be against natural and divine law that punishment should be executed on a person before he is convicted.

§12 It follows from the third proposition above that confiscation of goods may be retroactive to the time of the commission of the crime, even when the heretic has been convicted after his death, no matter who has possession of those goods at the time. This corollary is also accepted by all; see in particular Nicolaus de Tudeschis's commentary on the title *De hereticis* (in X. 5. 7. 10 §2; 16 §1-4).

§13 It further follows that all sales, donations, and other alienations of his possessions by a heretic made after the date of his crime are invalid, and that once he has been convicted all such transactions are rescinded by the public treasury and the goods confiscated without compensation of the purchasers. This again is universally accepted (see for example Nicolaus de Tudeschis, *loc. cit.*, and *Codex*, *loc. cit.*).

§14 5. *The heretic is nonetheless a true owner in the court of conscience (in foro conscientiae) until he is duly convicted.* This proposition appears to contradict Conrad Summenhart, Eimeric's *Directorium inquisitorum*, and expressly contradicts Johannes Andreae, but it is upheld by Silvestro Mazzolini da Priero (*Summa Syluestrina*, s.v. haeresis 1. 8. 13), and

25. See Vitoria's commentary on this article in *On Laws* §125, and *On Civil Power* 3. 1. He discussed the same theme in *In ST* II-II. 89-122 (Vitoria 1932-52: V. 9-285).

lengthily debated to similar effect by Hadrian VI (*Quaestiones quodlibeticae* VI. 2) and Cajetan (*Summula de peccatis*, s.v. poena). The proofs run as follows: first, because to be deprived of something 'in the court of conscience' is a punishment, and should therefore by no means be inflicted before conviction; and I am not sure that human law has the power to convict. Then again, in the relevant decretal *Cum secundum leges* (Sext 5. 2. 19) Boniface VIII expressly states that confiscations in cases of heresy are to be made in exactly the same way as the *ipso facto* confiscations prescribed in cases of incestuous marriages, forced marriages of free-born women after rape, non-payment of import duties, or illegal export of prohibited goods such as arms to the Saracens. All this is made quite clear in the decretal mentioned, and in *Codex* V. 5. 3 and IX. 13. 1, X. 5. 6. 6, and *Digest* XXXIX. 4. 16. But no one denies that the incestuous man, the rapist, the arms-dealer with the Saracens, or the tax-evader remains the true owner of his possessions in conscience; why not the heretic, therefore? Conrad Summenhart himself classes heresy along with these crimes.²⁶

There follow a number of corollaries:

- §15 1. A heretic may lawfully live off his possessions;
- §16 2. Further, he may dispose of his possessions by free gift (*titulo gratuito*), for instance by donation;
- §17 3. But he may not dispose of them by chargeable transactions (*titulo oneroso*) such as sale or endowment if there is a possibility that a charge may be brought against him in law, since this would clearly involve deceiving the purchaser, who runs the risk of losing both the purchase and the price if the vendor is convicted;
- §18 4. Finally, if there is no danger of confiscation a heretic may even lawfully dispose of his possessions by chargeable transaction; for example a Catholic may lawfully purchase goods from a German heretic. It would be harsh if a Catholic could not lawfully buy or sell lands to a heretic in a Lutheran city. But this would be the necessary conclusion if a heretic was no true owner of his possessions in the court of conscience.
- §19 THE CONCLUSION of all this is that the barbarians are not impeded from being true masters, publicly and privately, either by mortal sin in general or by the particular sin of unbelief. Nor can Christians use either of these arguments to support their title to dispossess the barbarians of their goods and lands, as Cajetan elegantly deduces (in *ST* II-II. 66. 8).

26. The reference is located by Barbier (Vitoria 1966: 26 n.) as *Septipertitum opus de contractibus* I. 7. 2. LSG add: 'And it would be too severe to compel a man who had repented of heresy to return his goods to the public purse.'

§20 [Question 1, Article 4: Whether irrational men can be true masters]

It remains to discuss whether men who are irrational or mad can be true masters. And first of all it may be debated *whether a man requires the use of reason in order to have dominion*.

1. Conrad Summenhart concludes that dominion may belong to irrational creatures, both sensate and insensate (*Septipertitum opus de contractibus* I. 6). His proof is that dominion is nothing other than 'the right to use a thing for one's own benefit (*ius utendi re in usum suum*)'.²⁷ Yet brute creatures have this sort of use of grasses and plants:

And God said, Behold, I have given you every herb bearing seed which is upon the face of the earth, and every tree in the which is the fruit of a tree yielding seed; to you it shall be for meat. And to every beast of the earth, and to every fowl of the air, and to every thing that creepeth upon the earth, wherein there is life, I have given every green herb for meat: and it was so. (Gen. 1: 29–30)

So, too, the stars have the right to shed their light:

And God set them in the firmament of the heaven to give light upon the earth, and to rule over the day and over the night. (*ibid.* 17–18)

The lion has dominion (*dominium*) over all the animals that walk upon the earth, whence it is called 'king of the beasts'; and the eagle is lord of all the birds of the air, according to the psalm: 'the house of the eagle is their leader' (Ps. 104: 17).²⁸

Silvestro Mazzolini da Priero shares this view, pointing out that the elements exercise dominance over one another (*Summa Syluestrina*, s.v. *dominium* §1–2).²⁹

LET US ANSWER with the following propositions, beginning with this first:

1. *Irrational creatures clearly cannot have any dominion*, for dominion is a legal right (*dominium est ius*),³⁰ as Conrad Summenhart himself admits. Irrational creatures cannot have legal rights; therefore they cannot have any dominion. The minor premiss is proved by the fact that

27. On this definition see Pagden 1987: 84 (with an alternative translation of the ambiguous Latin phrase *ad usum suum*, 'for its proper use').

28. This is the reading of the pre-Tridentine Vulg. (*herodii domus dux est eorum*); AV reads 'as for the stork, the fir trees are her house' (*ciconiae domus sunt abietes*).

29. Mazzolini, however, makes a clear distinction between *dominium perfectum* and the *dominium rerum* to which Vitoria refers.

30. LSG *ius*: *usus P*, *deinde ens*. It appears that the scribe of *P* crossed his mistake out with the intention of writing the correction in the margin, but if he did so it is now illegible.

irrational creatures cannot be victims of an injustice (*iniuria*), and therefore cannot have legal rights: this assumption is proved in turn by considering the fact that to deprive a wolf or a lion of its prey is no injustice against the beast in question, any more than to shut out the sun's light by drawing the blinds is an injustice against the sun. And this is confirmed by the absurdity of the following argument: that if brutes had dominion, then any person who fenced off grass from deer would be committing a theft, since he would be stealing food without its owner's permission.

And again: wild animals have no rights over their own bodies (*dominium sui*); still less, then, can they have rights over other things. The major premiss is proved by the fact that it is lawful to kill them with impunity, even for sport; as Aristotle says, hunting wild animals is naturally just (*Politics* 1256^b9–25).

Finally, these wild beasts and all irrational beings are subject to the power of man, even more than slaves; and therefore, if slaves cannot own anything of their own, still less can irrational beings. This argument is confirmed by Aquinas (*ST* I-II. 1. 1–2, I-II. 6. 2, and *Summa contra gentiles* III. 2): only rational creatures have mastery over their own actions (*dominium sui actus*), as Aquinas also shows in *ST* I. 82. 1 ad 3.³¹ If, then, brutes have no dominion over their own actions, they can have no dominion over other things.

Although this argument may seem a mere quibble over words, it is quite improper and contrary to normal usage.³² We do not speak of anyone being 'the owner' of a thing (*dominium esse*) unless that thing lies within his control. We often say, for example: 'It is not in my control, it is not in my power', meaning I am not master or owner (*dominus*) of it. By this argument brutes, which do not move by their own will but are moved by some other, as Aquinas says (*ST* I-II *loc. cit.*), cannot have any dominion (*dominium*).

The objection proposed by Silvestro Mazzolini da Priero, namely that dominion sometimes means not a legal right but merely *de facto* power, such as the dominance of fire over water, is invalid. If this definition of dominion were correct, then a robber would have the right over other men (*dominium in homines*) to commit murder simply because he had the power to do so, and a thief would have the right to steal money. Therefore, when he speaks of the stars 'ruling' over day and night or calls the lion 'king of the beasts', these are mere figures of speech.

31. LSG add: 'a person is master of his own actions insofar as he is able to make choices between one course and another; hence, as Aquinas says in the same passage, we are not masters as regards our appetite for our own destiny, for example'.

32. LS add 'to attribute dominion to irrational beings'. The variant looks attractive; G, however, agrees with P.

§21 [Question 1, Article 5: Whether children can be true masters]

On the other hand what of a different question, raised in connexion with children before the age of reason: can they be legal masters? Children seem in this respect not to be any different from irrational beings. As the Apostle says: 'the heir, as long as he is a child, differeth nothing from a slave' (Gal. 4: 1). But a slave cannot be a master; *ergo*, etc.

LET US ANSWER with this second proposition:

2. *Children before the age of reason can be masters.* This is self-evident, first because a child can be the victim of an injustice (*iniuria*); therefore a child can have legal rights, therefore it can have a right of ownership (*dominium rerum*), which is a legal right. Again, the possessions of an orphan minor in guardianship are not the property of the guardians, and yet they must be the property of one of the two parties; *a fortiori* they are the property of the minor. Again, a child in guardianship may legally inherit property; but an heir is defined in law as the person who succeeds to the inheritance of the deceased, hence the child is the owner of the inheritance (*Digest XLIV. 3. 11; Institutions II. 19. 7*).³³ Furthermore, we said earlier (1. 2 §3, and ad 3) that the foundation of dominion is the fact that we are formed in the image of God; and the child is already formed in the image of God. The Apostle goes on to say, in the passage of Galatians quoted, 'the heir, as long as he is a child, differeth nothing from a slave, though he be lord of all' (Gal. 4: 1). The same does not hold of an irrational creature, since the child does not exist for another's use, like an animal, but for himself.

§22 [Question 1, Article 6: Whether madmen can be true masters]

But what of madmen (I mean the incurably mad, who can neither have nor expect ever to have the use of reason)?

LET US ANSWER with this third proposition:

3. *These madmen too may be true masters.* For a madman too can be the victim of an injustice (*iniuria*); therefore he can have legal rights. I leave it to the experts on Roman law to decide whether madmen can have civil rights of ownership (*dominium civile*).

§23 Whatever the answer to that, I conclude with this final proposition:

33. *P heres subcedit in defuncti hereditate ergo est dominus hereditatis : Sed heres est qui succedit in ius defuncti et qui est dominus haereditatis LSG.*

4. *The barbarians are not prevented by this, or by the argument of the previous article, from being true masters.* The proof of this is that they are not in point of fact madmen, but have judgment like other men.³⁴ This is self-evident, because they have some order (*ordo*) in their affairs: they have properly organized cities, proper marriages, magistrates and overlords (*domini*), laws, industries, and commerce, all of which require the use of reason. They likewise have a form (*species*) of religion, and they correctly apprehend things which are evident to other men, which indicates the use of reason.³⁵ Furthermore, ‘God and nature never fail in the things necessary’ for the majority of the species, and the chief attribute of man is reason; but the potential (*potentia*) which is incapable of being realized in the act (*actus*) is in vain (*frustra*).³⁶

Nor could it be their fault if they were for so many thousands of years outside the state of salvation, since they were born in sin but did not have the use of reason to prompt them to seek baptism or the things necessary for salvation.

Thus if they seem to us insensate and slow-witted, I put it down mainly to their evil and barbarous education.³⁷ Even amongst ourselves we see many peasants (*rustici*) who are little different from brute animals.

[Question 1, Conclusion]

THE CONCLUSION OF ALL THAT HAS BEEN SAID is that the barbarians undoubtedly possessed as true dominion, both public and private, as any Christians. That is to say, they could not be robbed of their property,

34. LSG substitute for the last phrase ‘but have, in their own way, the use of reason’.

35. Vitoria’s sketch of Indian society is a modified version of Aristotle’s criteria for the civil life (e.g. *Politics* 1328^b6–22), particularly as developed in Aquinas’ commentary on the famous passage on barbarians as ‘natural slaves’ (*Politics* 1255^a28–34); Aquinas, 1971: A.74–A.93. See Pagden 1986: 68–79, and compare 3. 8 below.

36. This ‘gnomic utterance’ is an intended echo of Aristotle’s oft-repeated dictum that ‘nature makes nothing in vain’ (*On the Soul* 432^b22–3 ‘nature never makes anything without a purpose and never leaves out what is necessary’; *Generation of Animals* 788^b20–1 ‘nature never fails nor does anything in vain’; *Politics* 1253^a8, 1256^b20–1 ‘nature makes nothing incomplete and nothing in vain’; cf. 2. 2 below). Vitoria’s pupil Domingo de las Cuevas, in his *De insularis*, glossed this passage. ‘God and nature make nothing in vain, and since they [the Indians] potentially have the use of reason, being men, they are able to have it, and therefore they do have it’ (printed in Vitoria 1967: 196–218, on p. 199). The full implication of the argument had already been pointed out by Bernardo de Mesa at the *Junta* of Burgos in 1513 to claim that the Indians were natural slaves was to imply that God had created an imperfect creature incapable of realizing its potential (Pagden 1986: 49–50, 93–7).

37. For a full discussion of the Aristotelian concept of *ethismos* to which Vitoria here alludes see Pagden 1986: 82.

either as private citizens or as princes, on the grounds that they were not true masters (*veri domini*). It would be harsh to deny to them, who have never done us any wrong, the rights we concede to Saracens and Jews, who have been continual enemies of the Christian religion. Yet we do not deny the right of ownership (*dominium rerum*) of the latter, unless it be in the case of Christian lands which they have conquered.

TO THE ORIGINAL OBJECTION ONE MAY THEREFORE SAY, AS CONCERNS the argument that *these barbarians are insufficiently rational to govern themselves* and so on (1. 1 ad 2):

1. Aristotle certainly did not mean to say that such men thereby belong by nature to others and have no rights of ownership over their own bodies and possessions (*dominium sui et rerum*). Such slavery is a civil and legal condition, to which no man can belong by nature.

2. Nor did Aristotle mean that it is lawful to seize the goods and lands, and enslave and sell the persons, of those who are by nature less intelligent. What he meant to say was that such men have a natural deficiency, because of which they need others to govern and direct them. It is good that such men should be subordinate to others, like children to their parents until they reach adulthood, and like a wife to her husband. That this was Aristotle's true intention is apparent from his parallel statement that some men are 'natural masters' by virtue of their superior intelligence. He certainly did not mean by this that such men had a legal right to arrogate power to themselves over others on the grounds of their superior intelligence, but merely that they are fitted by nature to be princes and guides.

Hence, granting that these barbarians are as foolish and slow-witted as people say they are, it is still wrong to use this as grounds to deny their true dominion (*dominium*); nor can they be counted among the slaves.³⁸ It may be, as I shall show, that these arguments can provide legal grounds for subjecting the Indians, but that is a different matter.

§24

For the moment, the clear conclusion to the first question is therefore that *before arrival of the Spaniards these barbarians possessed true dominion, both in public and private affairs.*

[Question 2: By what unjust titles the barbarians of the New World passed under the rule of the Spaniards]

Accepting, therefore, that they were true masters, it remains to consider by what title we Christians were empowered to take possession of their

38. LS (but not G) add 'civil slaves'.

territory. I shall first list the irrelevant and illegitimate titles which may be offered, and then pass to the legitimate titles by which the barbarians could have been subjected to Christian rule. There are seven irrelevant titles, and seven or perhaps eight just and legitimate ones. And the first title might be as follows:

Question 2, Article 1: First unjust title, that our most serene Emperor might be master of the whole world

If this were so, then even if in the past there had been some irregularity (*vitium*) in the Spanish title, it would be entirely wiped out in the person of our most Christian Caesar the emperor.³⁹ Granting the barbarians had true dominion as explained above, they might still have superior overlords, just as lesser princes are beneath a suzerain and some kings are beneath the emperor, because it is possible for several parties to have dominion over the same thing; hence the jurists' well-worn distinctions between dominions high and low (*dominium altum, bassum*), direct and usable (*directum, utile*), and mere and mixed (*merum, mixtum*). The question, then, is whether these barbarians had some superior overlord. This doubt can refer only to the emperor and the pope; it is them I shall discuss.

1. It seems in the first place that the emperor is master of the whole world, and consequently of the barbarians. This is clear first of all from the common style of address used of the emperor [as 'Divine Maximilian, or Eternally August Charles Lord of the World (*orbis dominus*)'];⁴⁰ and second, from the passage in Luke which speaks of a decree going out 'from Cæsar Augustus that all the world should be taxed' (Luke 2: 1), since it would not be fitting that Christian emperors should be of less rank than the Roman emperor Augustus.

2. Our Lord evidently judged Caesar to be the true master of the Jews, since he said 'Render unto Caesar the things which be Caesar's' (Luke 20: 25). But he clearly could not have had this right (*ius*) other than as emperor. To this effect Bartolus of Sassoferrato states expressly in his commentary on Emperor Henry VII's constitution *Ad reprimendam* (X. 1. 31. 8) that 'the emperor is *de iure* master of the whole world'.⁴¹ The same opinion is expressed in the *Glossa ordinaria* on the

39. Charles I of Spain succeeded his grandfather Maximilian as emperor in 1520.

40. The words in square brackets are supplied from LSG, having been omitted by P.

41. For Bartolus' celebrated distinction between the emperor's *de iure* and *de facto* dominion of the world, see Skinner 1978: I. 9–10.

decretal *Per uenerabilem* (X. 4. 17. 13), and again at length on *Venerabilem* (X. 1. 6. 34), adducing as proof the canon *In apibus* (*Decretum* C.7. 1. 41) in which Jerome talks of there being one emperor in all the world just as there is one queen in a hive of bees (*Epistles* 125. 15); the Roman *Lex Rhodia* (*Digest* XIV. 2. 9), where Emperor Antoninus says 'I, master of the universe (*dominus mundi*)'; and the law *Bene a Zenone* (*Codex* VII. 37. 3 §1), which states that 'all things are understood to belong to the ruler'.⁴²

3. A further proof is that first Adam and later Noah were clearly masters of the whole world, according to the words of the Lord to Adam: 'Let us make man in our image, after our likeness, and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth', and a little further on, 'Be fruitful and multiply, and replenish the earth, and subdue it', which he repeated in more or less the same terms to Noah (Gen. 1: 26, 28; 8: 17). Now they had successors, who must therefore have been masters of the earth.

4. Again, we cannot suppose that God founded any but the best kind of government in the world, since 'in wisdom hast Thou made them all' (Ps. 104: 24). But the best kind of government is monarchy, as St Thomas says so well in *De regimine principum* I. 2, and as Aristotle seems to think in *Politics* 1286^b3-7;⁴³ therefore by divine institution there ought to be one emperor of the world.

5. Finally, things which are additional to nature (*praeter naturam*) ought to imitate natural things; but in natural things there is always one ruler, as one heart in the body, one rational part in a soul. Therefore there should be only one ruler in the world, just as there is only one God.

BUT this opinion is without any foundation. I reply as follows:

§25 1. MY FIRST PROPOSITION is that *the emperor is not master of the whole world*. The proof of this is as follows: dominion (*dominium*) can exist only by natural law, divine law, or human law. But the emperor is not master of the world by any of these. The minor premiss is proved as follows.

42. For the standard canonist texts cited in this paragraph (compare *I On the Power of the Church* 5. 1, 5. 9), see the Glossary, s.vv., and Muldoon 1968: 269-71; on *Lex Rhodia* as a topic in juristic writings about imperial power, Ullman 1975: 57-8.

43. Compare *On Civil Power* I. 8. Aquinas prefers the 'mixed' constitution in *ST* I-II. 105. 1 (see *On Law* §136 *ad loc.*, p. 197); Aristotle prefers aristocracy in the passage of the *Politics* alluded to here, whereas he opts for monarchy in *Nicomachean Ethics* 1160^a31-6.

First, as regards natural law: St Thomas rightly says that in natural law all are free other than from the dominion (*dominium*) of fathers or husbands, who have dominion over their children and wives in natural law (*ST* I. 92. 1 ad 2; I. 96. 4); therefore no one can be emperor of the world by natural law. St Thomas also says that dominion and supremacy (*praelatio*) were introduced by human law, not natural law (*ST* II-II. 10. 10). Otherwise there would be no good reason why imperial dominion should belong to the Spaniards rather than to the French.⁴⁴ Aristotle puts it this way: power is of two kinds, family power like that of a father over his sons or a husband over his wife, which is natural, and civil power, which may indeed have had its origin in nature and may thus be said to belong to natural law, since as St Thomas says ‘man is a civil animal’ (*De regimine principum* I. 1), but which was undoubtedly not instituted by nature, but by an enactment (*lex*).

Second, as regards divine law: we nowhere read of the emperors and masters of the world before the advent of Christ, even though Bartolus of Sassoferrato in that gloss of his on *Ad reprimendam* (X. 1. 31. 8) adduces Nebuchadnezzar, of whom it was said: ‘Thou, O king, art a king of kings, for the God of heaven hath given thee a kingdom, power, and strength, and glory, and wheresoever the children of men dwell hath he given into thine hand, and made thee ruler over them all’ (Dan. 2: 37–8). But it is certain that Nebuchadnezzar did not receive some special gift of imperial power from God; the meaning of the passage is simply that he ruled like any other prince, since as Paul says ‘there is no power but of God’ (Rom. 13: 1), and ‘by Me kings reign and princes decree justice’ (Prov. 8: 15). Besides, Nebuchadnezzar’s empire did not reach *de iure* over the whole world, as Bartolus thinks, since the Jews were not by right his subjects. And this last fact proves that no one was ever master of the whole world by divine law, because the people of Israel was free of any foreign suzerain – indeed, was expressly forbidden by law from having any foreign master: ‘thou mayest not set a stranger over thee’ (Deut. 17: 15). And although St Thomas Aquinas appears to affirm that God delivered imperial power to the Romans because of their justice and patriotism and excellent laws (*De regimine principum* III. 4), and Augustine says the same thing (*De ciuitate dei* III. 10), we are not to understand that they held their empire by divine institution or livery of seisin (*traditio*), but that divine Providence brought it about that they should obtain universal empire by some other

44. *LS* read: ‘to the Germans rather than the French’ (G ‘to the Germans rather than any others’). The change makes better sense after Charles V’s abdication of the imperial title on 16 January 1556. This reading is therefore *prima facie* evidence of posthumous tampering with the text; compare *On the Law of War* 2. 3, footnote 27.

right, such as just war or some other way. This was not the sense in which Saul and David received their kingship 'from God'.

This point can easily be understood by anyone who examines the method of succession by which the empires and dominions of the world have been handed down to our own day. Leaving aside those which passed away before the Flood, it is clear that after Noah the world was divided into various countries and kingdoms. This was either ordered by Noah himself, who lived for three hundred and fifty years after the Flood (Gen. 9: 28) and sent out expeditions to colonize the various regions of the earth, according to the account of Berosus of Babylon;⁴⁵ or, as seems more likely, by mutual consent of the nations, as various families colonized different countries. So Abraham said to Lot: 'Is not the whole land before thee? Separate thyself, I pray thee, from me; if thou wilt take the left hand then I will go to the right, or if thou depart to the right hand then I will go to the left' (Gen. 13: 9). We are told in Gen. 10 how the great-grandsons of Noah divided 'in their lands and after their nations', either because in some lands certain men set themselves up as tyrants for the first time (as was the case of Nimrod, of whom it is said that he first 'began to be a mighty one in the earth', Gen. 10: 8), or because some of them gathered together in one commonwealth and by common consent set up a prince. What is certain, however, is that dominions and empires began on earth in one of these two not dissimilar ways; and they have since been handed down by inheritance or conquest or some other title until our own times, or at least down to the advent of our Saviour. So it is obvious that no one before Christ obtained an empire by divine law; and the emperor is not entitled on any such grounds to arrogate to himself the dominion (*dominium*) of the whole world, nor, as a consequence, of these barbarians.

Since the advent of our Lord, however, it might be claimed that there has existed a single emperor of the world by livery of seisin (*traditio*) from Christ, since He was master of the world by his human nature according to the verse 'All power is given unto me in heaven and in earth' (Matt. 28: 18). This is to be understood as referring to His humanity according to Augustine and Jerome; and according to the words of the Apostle, 'for He hath put all things under his feet' (1 Cor. 15: 27), and it is taken to mean that, as He left one vicar on earth in spirituals, so too He left a vicar, namely the emperor, in temporals. St Thomas says that Christ was the true master and monarch of the world from the moment of his birth, and that Augustus was unwittingly his regent. This obviously means regent in temporal, not spiritual things.

45. Fragments of Berosus are preserved in Josephus, *Contra Apionem* 1. 19.

And therefore, if Christ's kingdom was temporal, it embraced the whole world; so it follows that Augustus was master of the world, and by this token so are his successors.

But this too is quite invalid as an argument. First, it is by no means certain that Christ was temporal master of the world according to his humanity – more probably not, since the Lord himself seems to have asserted 'My kingdom is not of this world' (John 18: 36), from which St Thomas deduced in *De regimine principum* III. 13 that Christ's dominion (*dominium*) is directly ordained for the salvation of the soul and spiritual goods, though it is not excluded from temporal things insofar as they are ordained for spiritual ends. It is thus clear that St Thomas did not hold the opinion that Christ's kingdom was of the same type as civil and temporal kingship, although for the purposes of redemption He had complete power even in temporal matters. Apart from this purpose, however, he had no power.⁴⁶ Besides, even if He was a temporal lord, it is mere guesswork to deduce that He left this power to the emperor, since there is no mention of such a thing in all Scripture. As for the point that St Thomas says that Augustus Caesar was Christ's vice-gerent, the first point is that he said this in *De regimine principum*, but elsewhere, when specifically discussing the power of Christ (ST III. 59), he made no mention of this temporal power of Christ; and the second point is that St Thomas meant that Augustus was 'vice-gerent of Christ' in the sense that temporal power is subject and subservient to spiritual power. Indeed, in this sense kings are ministers of bishops, just as the craft of the armourer is subservient to the crafts of knighthood and war; but the knight or general is not an armourer himself, even though he exercises command over the armourer in the manufacture of arms.⁴⁷ So St Thomas comments expressly on the passage in question (in John 18: 36) that Christ's kingdom was not temporal, as Pilate understood it, but spiritual, as the Lord himself declared: 'Thou sayest that I am king; to this end was I born, and for this cause came I into the world, that I should bear witness unto the truth' (John 18: 37). It is evident, therefore, that to say that there is a single emperor and master of the world by livery of seisin (*traditio*) from Christ is simple twisting of the evidence.

An obvious confirmation is the following: if the emperor was master by divine law, how did the empire come to be divided into its western and eastern components? The division was first made between the sons of Constantine the Great; later Pope Stephen transferred the western empire to the Germans, as stated in the decretal *Venerabilem* (X. 1. 6.

46. This passage summarizes the argument of *On Civil Power* 1. 11.

47. Compare *I On the Power of the Church* 3. 3.

34).⁴⁸ The comment of the *Glossa ordinaria* on this decretal, to the effect that the Greeks ceased to be emperors from this moment, is ignorant and wrong, since the German emperors never claimed that their title made them lords of Greece. Besides, the emperor of Constantinople John VIII Palaeologus was recognized as the legitimate emperor at the Council of Florence (1439).

Furthermore, the patrimony of the Church is not subject to the emperor, as even the jurists, among them Bartolus himself, admit. But if everything in the world was subject to the emperor by divine law, no emperor could remove anything from that subjection by a donation or other title, any more than a pope can exempt anyone from the papal power.⁴⁹ But the kingdoms of Spain and France are not subject to the emperor, as stated in Innocent III's decretal *Per uenerabilem* (X. 4. 17. 13), even though the author of the *Glossa ordinaria* wilfully adds that this is only so *de facto*, but not *de iure*.⁵⁰

Finally, the doctors admit that city republics (*ciuitates*) which were once subject to the empire may gain their independence by invoking custom. This could not be so if their subjection were a matter of divine law.⁵¹

Third, as regards human law: it is established that in this case, too, the emperor is not master of the whole world, because if he were it would be solely by authority of some enactment (*lex*), and there is no such enactment. Even if there were, it would have no force, since an enactment presupposes the necessary jurisdiction; if, therefore, the emperor did not have universal jurisdiction before the enactment of the law, the enactment could not be binding on those who were not his subjects. Nor does the emperor have universal dominion by legitimate

48. PG ad Romanos : ad Germanos LS. For the famous decretal *Venerabilem* (which all the witnesses incorrectly cite as *Per uenerabilem*) see the Glossary, s.v.

49. Vitoria alludes to the Donation of Constantine (cf. *On Civil Power* 1. 11; I *On the Power of the Church* 5. 1).

50. The German Johannes Teutonicus, author of the *Glossa ordinaria* on the decretals, was indeed a strong defender of the *de iure* universal dominion of the German emperor (Tierney 1954: 617–19); but it was a Spanish canonist who first glossed *Per uenerabilem* as meaning that the kings of Spain were *de facto* exempt from the emperor's suzerainty (Gaines Post, 'Blessed Lady Spain: Vicentius Hispanus and Spanish National Imperialism in the Thirteenth Century', *Speculum* 29 (1954), 198–209). Furthermore, it is disingenuous to assert that Innocent 'states' that the kingdom of Spain is not subject to the emperor, since his decretal refers only to France.

51. For the debate about the *Regnum Italicum* alluded to here, and Bartolus' 'revolutionary political claim' that Italian city-states or communes may be said to be *sibi principes* if they can prove that they have exercised *de facto* independence 'for a very long time', see Skinner 1978: I. 1–12. In view of the specific context, *ciuitates* is here rendered 'city republics', rather than 'cities' or 'communities', as elsewhere.

succession, gift, exchange, purchase, just war, election, or any other legal title, as is established.

Therefore the emperor has never been master of the whole world.

§26 2. THE SECOND CONCLUSION is that even if the emperor were master of the world, he could not on that account occupy the lands of the barbarians, or depose their masters and set up new ones, or impose taxes on them. The proof is as follows. Even those who attribute dominion of the whole world to the emperor do not claim that he has it by property (*per proprietatem*), but only that he has it by jurisdiction (*per iurisdictionem*). Such a right does not include the licence to turn whole countries to his own use, or dispose at whim of townships or even estates.

FROM EVERYTHING THAT HAS BEEN SAID, therefore, it is clear that the Spaniards could not invade these lands using this first title.

Question 2, Article 2: Second title, that the just possession of these countries is on behalf of the supreme pontiff

Those who defend this title – and it has energetic supporters – assert that the pope is monarch of the whole world, even in temporals, and consequently that he was empowered to constitute the kings of Spain as kings and lords of those lands; and that this was in fact what happened.

1. In this connexion, it is the opinion of some jurists that the pope has plenary jurisdiction in temporals throughout the whole world. Indeed, Bartolus seems to hold this in his commentary on *Ad reprimendam* (X. 1. 31. 8), adding that the power of all secular princes is bestowed upon them by the pope. This is the view of Hostiensis in his commentary on the decretal *Quod super his* (X. 3. 34. 8), of St Antonino of Florence in his *Summa theologia* III. 22. 5, and of Agostino Trionfo.

Silvestro Mazzolini da Priero; shares their view, and attributes an even larger and more generous plenitude of power to the pope (*Summa Syluestrina*, s.vv. *infidelitas* §7, *Papa* §7–14, *legitimus* §4). What he has to say on the subject in these passages is truly extraordinary: for instance, that the power of the emperor and of all other princes is sub-delegated through the pope, being derived from God through the mediation of the pope, and that all their power therefore depends on the pope; that Constantine gave the papal lands in recognition of the pope's temporal dominion, while the pope in return gave Constantine the

usufruct and revenues of the empire; or indeed that Constantine donated nothing, but merely returned what had been taken away, and that if the pope does not exercise jurisdiction in temporal matters beyond the borders of the patrimony of the Church this is not because he lacks the authority to do so, but merely to preserve peace and avoid provoking the Jews. All these things, and a good deal besides in even more foolish and idle vein, Mazzolini asserts.

And the one proof adduced by all these fellows is simply this: 'The earth is the Lord's, and the fulness thereof' (Ps. 24: 1), and 'All power is given unto me in heaven and in earth' (Matt. 28: 18). The pope is Christ's vicar; and 'being found in fashion as a man, he humbled himself and became obedient unto death, wherefore God also hath highly exalted him, and given him a name which is above every name, that at the name of Jesus every knee should bow, of things in heaven and things in earth' (Phil. 2: 8-10). Bartolus of Sassoferrato seems to have been of this view in his commentary on *Ad reprimendam*, and even St Thomas appears to support it at the end of his commentary on Lombard's *Sentences*, in the very last words of Book II, which state that the pope 'holds the two summits of power', that is both secular and spiritual (in II. 44 ad 4). The same opinion is held by Hervé de Nédellec, *De potestate ecclesiastica et papali*.

On the basis of these texts, the authors of this view deduce, first, that the pope, as temporal lord, was freely empowered to make the kings of Spain princes of the barbarians; and second, that even if he was not so empowered, if the barbarians refuse to recognize the pope's temporal dominion over them he is at any rate empowered on this ground to declare war on them and impose princes upon them. In the event, both of these things happened. First the pope ceded these countries to the kings of Spain; then the barbarians were informed that the pope is the vicar and lieutenant of God on earth, that they should therefore recognize him as their superior, and that if they refused war would justly be declared upon them, their countries conquered, and so forth. This second procedure follows word for word the passage of Hostiensis cited above, and Angelo Carletti's *Summa Angelica*, s.v. infidelitas §7.⁵²

BUT ON THE OTHER HAND I have discussed the question of the pope's temporal power at length in *I On the Power of the Church* 5. 1-5.

§27 I REPLY briefly, therefore, with a series of propositions:

52. Vitoria refers first to Alexander VI's bulls of donation, and second to the *requerimiento* (see the Introduction, p. xxiv, the Glossary s.vv., and 2. 4 below).

1. *The pope is not the civil or temporal master of the whole world*, in the proper meaning of 'dominion' and 'civil power'. This is the conclusion of Torquemada, *Summa de ecclesia* II. 113; of Johannes Andreae in his *Novella* on the decretal *Per uenerabilem* (X. 4. 17. 13); and of Huguccio of Pisa in his commentary on the canon *Cum ad uerum* (*Decretum* D.96. 6). The learned Innocent III clearly stated that he had no power in temporal matters over the king of France in his decretal *Per uenerabilem* (X. 4. 17. 13), and this is also the express determination of St Bernard in *De consideratione ad Eugenium III* 2. 9–11.⁵³ The opposing opinion is clearly contradicted by the teaching of the Lord, who said: 'ye know that the princes of the Gentiles exercise dominion over them, and that they that are great exercise authority upon them, but it shall not be so among you' (Matt. 20: 25–6; Luke 22: 25–6). It is also contrary to the teaching of the Apostle: 'neither as being lords over God's heritage, but being ensamples to the flock' (1 Pet. 5: 3). And if Our Lord Jesus Christ had no temporal dominion (*dominium*), as I have argued above to be more probable and as St Thomas also opines, then much less so does the pope, who is His vicar. Yet these men attribute to the supreme pontiff what he himself has never recognized; indeed, popes have frequently asserted the opposite, as I showed in the above-mentioned relection.

And the proof of this is really quite simple, as it was in the case of the emperor above: because the pope cannot have any dominion except by natural, divine, or human law. It is certain that he does not have it by natural or human law. As for divine law, no authority is forthcoming; hence it is vain and wilful to assert it. If the Lord said to Peter 'Feed my sheep' (John 21: 17), it is clear enough that he meant that his power was spiritual, not temporal. And a further demonstration that the pope does not have universal dominion is to be found in the Lord's statement that at the end of this world 'there shall be one fold, and one shepherd' (John 10: 16), which shows sufficiently clearly that at the present time not all the sheep belong to one fold.

Besides, even if Christ did have this power, it is accepted that He did not entrust it to the pope. The argument is clear: the pope is Christ's vicar no less in spiritual matters than temporal ones, yet he has no spiritual jurisdiction over the infidel, as our adversaries themselves admit, and as the Apostle expressly declares: 'For what have I to do to judge them also that are without?' (1 Cor. 5: 12); hence he has no temporal jurisdiction over them either. To be sure, the argument that Christ had

53. These two sentences, and much else in the ensuing argument, are lifted verbatim from *I On the Power of the Church* S. 1.

temporal power over the whole world and that therefore the pope has it also is mere nonsense. Christ, after all, undoubtedly had spiritual power over the whole world, over unbelievers as much as the faithful, and could enact laws which were universally binding, as He did in the case of baptism and the articles of the Faith; yet the pope does not have that power over unbelievers, nor can he excommunicate them, or prevent them from marrying within the degrees of consanguinity prohibited by divine law. Furthermore, according to the doctors Christ did not entrust His power of excellence to the apostles.⁵⁴ Thus the deduction that because Christ had temporal power over the whole world the pope also has it is invalid.

§28 2. My second proposition is that, even if the pope had such secular power over the whole world, *he could not give it to secular princes*. This is clear, because any such power would be annexed to the papacy, and no pope could separate it from the office of the supreme pontiff, or deprive his successor of it. No pontiff can be less supreme than the predecessor whom he succeeds; if a pope were to give away this power, the gift would be null, or the succeeding pope could take it back.

§29 3. The third proposition is that *the pope has temporal power only insofar as it concerns spiritual matters*; that is, as far as is necessary for the administration of spiritual things. This is the opinion of Torquemada in the passage already cited (*Summa de ecclesia* II. 114), and of all the doctors. The proof is that the art whose purpose is higher governs and instructs those arts whose purposes are lower, as Aristotle says in *Nicomachean Ethics* 1094^{ab}9–16. The purpose of spiritual power is ultimate happiness (*ultima felicitas*), whereas the purpose of civil power is social happiness (*felicitas politica*); therefore temporal or political power is subordinate to spiritual power. This is the argument used by Innocent III in his decretal *Solita* (X. 1. 33. 6).

The proposition is confirmed by the fact that when someone is entrusted with the power or care of some office, he is understood to have been entrusted with all those things without which the office could not properly be fulfilled: see the decretal *Sedes apostolica* (*Extravagantes Communes* 1. 6. 1). Since the pope is spiritual pastor by commission from Christ, and this office may be obstructed by the civil power, and since 'God and nature never fail in what is necessary',⁵⁵ it cannot be doubted that the pope was left sufficient power in temporal matters to govern spiritual affairs. By this token, the pope may infringe any civil

54. On Christ's *potestas excellentiae* or human power see *I On the Power of the Church* S. 9, footnote 61.

55. Compare 1. 6, footnote 36 above.

laws which promote sin, as he curtailed the laws about prescription in bad faith in the decretal *Quoniam omne* (X. 2. 26. 20).⁵⁶

He may also adjudicate between princes who are threatening to come to war over some quarrel about their princely rights, and pass sentence on their dispute after examining the case from both sides; in this case the princes are bound to accept his judgment, to avoid causing all the manifold spiritual evils which must necessarily arise from any war between Christian princes. If the pope does not do this, or does not do it often, it is not because he is not empowered to do so, as Dom Durandus of St-Pourçain claims, but for fear of provoking the princes to attempt to achieve their aim through bribery or rebellion against the Holy See. By the same token he may on occasion depose kings or institute new ones, as has sometimes happened. No true Christian should deny this power to the pope, as shown by Pierre de La Palu (*De causa immediata ecclesiasticae potestatis* 4. 1), Durandus of St-Pourçain, and Henry of Ghent (*Quodlibet* 6. 23). This is how we should understand the many laws which talk of the pope 'holding both swords', a doctrine upheld by the earlier doctors such as St Thomas in the passage of his commentary on Lombard's *Sentences* II. 44 ad 4 quoted above (2. 2 §2).⁵⁷ Indeed, I have no doubt that even bishops have temporal power of this kind within their own bishoprics, just as the pope has throughout the world. It is therefore wrong and evil of princes or magistrates to attempt to prevent bishops from forcing the laity to give up their sins by pecuniary penalties.⁵⁸ This sort of thing is not above the bishops' power, so long as they do not act out of greed for gain, but merely out of necessity for the spiritual good.

And from the same chain of reasoning, we may again take up the argument of the first proposition (§27 above). If the pope were master of the whole world, then a bishop would be temporal master in his own bishopric, since he too is the vicar of Christ in his own see. But this conclusion is denied by our adversaries.

§30 4. The fourth proposition is that *the pope has no temporal power over these barbarians, or any other unbelievers*. This is clear from the first and third propositions above: if the pope has no temporal power except in

56. For the pope's legislative and appellate jurisdiction in certain temporal matters compare *I On the Power of the Church* 5. 8; on the principle of 'prescription in good faith' see *ibid.*, footnote 57.

57. For the pope's power to depose kings, and the theory of the Two Swords, compare *I On the Power of the Church* 5. 7–9. Vitoria's chief source in this passage is Torquemada's *Summa de ecclesia* II. 113–16.

58. *LS* add 'or exile, or other temporal punishments'.

relation to spiritual matters,⁵⁹ and if 1 Cor. 5: 12 shows that he has no spiritual power over the barbarians, it follows that he can have no temporal power over them either.

- §31 There follows from all this the following corollary: that even if the barbarians refuse to recognize any dominion (*dominium*) of the pope's, war cannot on that account be declared on them, nor their goods seized. This is obvious, because the pope has no such dominion. And the proof is quite clear, for, as I shall show below and as our adversaries admit, even if the barbarians refuse to receive Christ as their lord, they cannot for that reason be attacked or harmed in any way. It is therefore the height of absurdity to claim, as these men do, that the barbarians may refuse Christ with impunity, but are obliged to accept Christ's vicar on pain of war and the plunder of all their goods.⁶⁰ And this is confirmed by the fact that, according to them, the reason why the barbarians cannot be compelled by force to accept Christ and his faith is that these are things for which they cannot be furnished with evident proof by natural reasonings. But much less can the dominion of the pope be so proved. Therefore they cannot be compelled by force to recognize the papal dominion. Silvestro Mazzolini da Priero, although he allows very broad powers to the papacy, expressly argues against Hostiensis that unbelievers cannot be forced by war to recognise this dominion, nor despoiled of their goods on this pretext (*Summa Sylvestrina*, s.v. infidelis §7). And this too is the opinion of Innocent IV in his commentary on the decretal *Quod super his* (X. 3. 34. 8); and undoubtedly also of St Thomas in *ST* II-II. 66. 8 ad 2, where he says that unbelievers cannot be despoiled of their goods unless they are the subjects of temporal princes, and for legitimate legal reasons which apply also to the confiscation of goods of these princes' other subjects. Cajetan makes this point expressly in his commentary on the same passage. Indeed, the Saracens who live amongst Christians have never been despoiled of their goods or otherwise oppressed on this pretext; if this title was sufficient to declare war on them, it would be tantamount to saying that they can be despoiled of their goods on the grounds of their unbelief, since it is clear that no unbeliever recognizes the pope's dominion. But there is no doctor, even among our adversaries, who concedes the argument that they may be despoiled solely on the grounds of unbelief. It is altogether sophistical to say, as their so-called doctors do, that war cannot be declared on

59. On this phrase (*in ordine ad spiritualia*) compare *I On the Power of the Church* 5. 8, and footnote 55 *ad loc.*

60. *LS* add 'and indeed capital punishment'.

unbelievers who recognize the dominion of the Roman pontiff, but can freely be declared on them if they do not recognize it; our opponents know perfectly well that no unbeliever recognizes any such thing.

The clear conclusion is that this title against the barbarians is also invalid, whether it is alleged because the pope gave dominion over these countries to the emperor,⁶¹ or because the barbarians fail to recognize the dominion of the pope. So argues Cajetan at length in his commentary on *ST* II-II. 66. 8 ad 2.⁶² Even the weighty authority of St Antonino of Florence must not be accepted; on this occasion he does no more than repeat Agostino Trionfo, just as he elsewhere tends to follow other canonists.

IT IS CLEAR from all that I have said that the Spaniards, when they first sailed to the land of the barbarians, carried with them no right at all to occupy their countries.

Question 2, Article 3: Third unjust title, that possession of these countries is by right of discovery

This title by right of discovery (*in iure inuentionis*) was the only title alleged in the beginning, and it was with this pretext alone that Columbus of Genoa first set sail. And it seems that this title is valid because:

1. All things which are unoccupied or deserted become the property of the occupier by natural law and the law of nations, according to the law *Ferae bestiae* (*Institutions* II. 1. 12).⁶³ Hence it follows that the Spaniards, who were the first to discover and occupy these countries, must by right possess them, just as if they had discovered a hitherto uninhabited desert.

BUT ON THE OTHER HAND, against this third title, we need not argue long; as I proved above (1. 1-6), the barbarians possessed true public and private dominion. The law of nations, on the other hand, expressly states that goods which belong to no owner pass to the occupier. Since

61. *P imperatori : tanquam dominus absolute LS.*

62. *LS add: The contrary opinion of the canonists need not unduly influence us, since (as I have said above) this is a question of divine law, and the majority of better authorities including Johannes Andreae are on our side, while they cannot adduce a single text in favour of their view.*

63. In 3. 1 below, however, *Ferae bestiae* is adduced as providing a just title (see footnote 77 *ad loc.*).

the goods in question here had an owner, they do not fall under this title. Therefore, although this title may have some validity when taken in conjunction with another (as I shall discuss below), of itself it provides no support for possession of these lands, any more than it would if they had discovered us.

Question 2, Article 4: Fourth unjust title, that they refuse to accept the faith of Christ, although they have been told about it and insistently pressed to accept it

It seems that this is a legitimate title for occupying that land of the barbarians because:

1. Barbarians are obliged to accept the faith of Christ, because 'he that believeth and is baptized shall be saved, but he that believeth not shall be damned' (Mark 16: 16). No one is damned except for mortal sin; and 'neither is there salvation in any other, for there is none other name under heaven given among men, whereby we must be saved' (Acts 4: 12). Since the pope is the minister of Christ, at least in spiritual things, it seems that barbarians may be compelled to receive the faith of Christ at least on the authority of the pope; and that if they are asked to do so and refuse, in the law of war action may be taken against them. Indeed, it seems that even princes may do this on their own authority, since they are 'ministers of God, and revengers to execute wrath upon him that doeth evil' (Rom. 13: 4). These barbarians do the greatest evil by refusing to accept the faith of Christ; therefore princes may coerce them to do so.

2. If the French refused to obey their king, the king of Spain would be empowered to compel them to obey; so if these barbarians refuse to obey God, who is the true supreme Lord, Christian princes are empowered to compel them to obey, since God's cause should clearly never be of less account than the cause of men. The confirmation of this is given by Duns Scotus in his commentary on the text which is the subject of this relection, Lombard's *Sentences* IV. 4. 9, arguing that someone ought to be compelled to obey a higher lord rather than a lower. Therefore if barbarians can be compelled to obey their own princes, much more can they be compelled to obey Christ and God.

3. If the barbarians were publicly to blaspheme against Christ, they could be compelled by war to desist from such blasphemies. This is conceded by the doctors, and it is true; we could declare war upon them if they put the Crucifix to ridicule, or in any way abused or shamed Christian things, for instance by making mockery of the sacraments of

the Church or things of this kind. This is obvious, because if they were to do wrong to any Christian king, we would be empowered to avenge the wrong, even after the king were dead; so much more so, then, if they insult Christ, who is the king and Lord of Christians. There can be no doubt about this; if Christ were yet alive amongst mortal men, and the pagans were to do him wrong, there is no doubt that we would be able to punish the wrong by war; and therefore we may still do so now. But unbelief is a greater sin than blasphemy, since, as St Thomas proves (*ST* II-II. 10. 3), unbelief is the gravest of all the sins caused by perversity of morals, being directly opposed to faith, whereas blasphemy is not directly opposed to faith, but only to the confession of faith. Unbelief also attacks the root of conversion to God, which is faith, whereas blasphemy does not. So, if Christians can punish unbelievers by war for their blasphemies against Christ, they must also be empowered to do so for their unbelief.⁶⁴

§32 BUT ON THE OTHER HAND let us reply with the following conclusions:

1. FIRST, *the barbarians, before they had heard anything about the Christian faith, were not committing the sin of unbelief merely because they did not believe in Christ.* This conclusion is taken word for word from St Thomas, *ST* II-II. 10. 1, where he explains that in the case of those who have never heard of Christ, unbelief is not logically a sin, but rather a punishment. Such ignorance of heavenly things is a consequence of the sin of our first parent. 'Those who are unbelievers in this situation', he says, 'may indeed be damned for other sins, but not for the sin of unbelief.' The Lord said: 'if I had not come and spoken unto them, they had not sin' (John 15: 22); Augustine explains in his commentary on this verse that He referred to the 'sin' of not believing in Christ, and this too is the opinion of St Thomas in *ST* II-II. 10. 6 and 34. 2 ad 2.

There are, however, many doctors who disagree. First of all, William of Auxerre, *Summa aurea* III. 3, who says that it is impossible for anyone to live in invincible ignorance, not merely of Christ, but of any article of faith; if he does his best, the Lord will enlighten him, either through an external teacher or by an inner light. And hence it will always be a mortal sin to believe anything contrary to the articles of faith, even, for example, for an old woman to whom the bishop preaches something contrary to an article of faith. In general, he says, ignorance of divine law excuses no one.

64. LS add: 'this deduction is confirmed by the fact that according to the civil laws blasphemy, being a lesser sin than unbelief, is not punishable by death when committed by a Christian, as unbelief is'.

The same opinion was held by William of Auvergne, bishop of Paris, using much the same argument: either such a person will do his best, and will receive enlightenment, or he will not, and will have no excuse (*De fide* prol.). The same idea seems to be expressed by Jean Gerson in *De spirituali uita animae* 4, 4.⁶⁵ Hugh of St Victor affirms that no man is excused from the commandment to undergo baptism by ignorance, since he can only fail to hear and know of it through his own fault, as shown by the example of Cornelius in Acts 10 (*De sacramentis* II. 6. 5). But Pope Hadrian limits this opinion in the following way (*Quodlibet* IV):

Matters of divine law fall into two categories. Some are such that God does not oblige all men universally to know, these being the difficult summits of divine law and scriptural commandments; in these there may be some question of invincible ignorance, even on the part of one who does his best in the matter. But others are such that God obliges all men universally to know, these being the articles of faith and the universal commandments of law; and of these it is true, as the doctors say, that there can be no excuse through ignorance, because if a man does his best in these, God will enlighten him either through an inner light or an external teacher.

All the same, the proposition as stated clearly accords with the express opinion of St Thomas. The proof is that those who have never heard about a thing are invincibly ignorant, and such ignorance cannot be a sin. The major premiss is proved by Paul: 'How shall they believe in him of whom they have not heard? and how shall they hear without a preacher?' (Rom. 10: 14). If the faith has not been preached to them, their ignorance is invincible, since they have no means of knowing. Paul does not condemn unbelievers on the grounds that they do not do their best to receive enlightenment from God, but on the grounds that when they heard they did not believe: 'have they not heard? Yes verily, their sound went into all the earth' (Rom. 10: 18). This shows that he condemns them because the Gospel had been preached throughout the world; otherwise he would not have condemned them, however many their other sins.

In this connexion, Hadrian is led astray on another point about this matter of ignorance: he says in the same passage of his *Quodlibet* that even in a matter of morals where a person displays all due diligence and industry in finding out what he needs to know, this is not sufficient to

65. *LS* add: 'It is the unanimous opinion of the doctors that in these matters of divine law there is no question of invincible ignorance, since God, who is ever ready to enlighten the mind in all that pertains to salvation and the avoidance of error, will always come to the aid of the man who does his best.' Compare *On Law* §125.

excuse ignorance unless he also disposes himself by contrition for his sins to receive enlightenment from God. For instance, someone is in doubt about a particular contract, and makes inquiries to the experts and takes other pains to find out the truth, and concludes that the contract is lawful. Now if the contract happens, nevertheless, to be unlawful and he closes it, and if by chance he happens to be in a state of sin, he has no defence. This is because he did not do his best to overcome his ignorance, because it is an established fact that in the state of sin, even if a man lays himself open to grace he will not be enlightened; therefore he can have no defence unless he removes the impediment to grace, that is his state of sin. It follows that if Perkin and Jack are in doubt about the same contract in equal circumstances, and both of them go to the same pains as far as humanly possible to assure themselves that the contract is lawful, but Perkin is in a state of grace, while Jack is in a state of sin, then Perkin has the defence of invincible ignorance, while Jack does not. And so, if both of them close the contract, Perkin has a defence while Jack does not.

But this argument, as I say, is fallacious. I have discussed the matter at length in my lectures on Aquinas, under the heading of *ignorance* (*In ST I-II. 6. 8 and 19. 5-6*). It is extraordinary to claim that an unbeliever, or indeed anyone in a state of mortal sin, cannot be invincibly ignorant about any matter whatsoever in divine law. In fact, the consequence of the argument would be that our Perkin, who is in a state of grace and thus invincibly ignorant of some matter to do with usury or simony, would become vincibly ignorant of the same thing by the very fact that his ignorance would then lead him into mortal sin. The thing is manifestly absurd.

§33 Therefore I assert that for ignorance to be considered, and in fact to be, vincible and hence a sin, it must be accompanied by some negligence to do with the particular matter in hand; for example, a refusal to listen, or a refusal to believe when one has heard. And conversely, for ignorance to be considered invincible it is sufficient that a man has taken every care humanly possible to find out the truth, even if he happens to be otherwise in a state of sin. As far as this is concerned, therefore, the verdict is the same for a man who is in a state of sin or one who is in a state of grace, both now and ever since the moment of Christ's coming, or at least since his Passion. Hadrian cannot deny that, just after our Lord's passion, the Jews who happened to be in India or in Spain would have been invincibly ignorant of the Lord's Passion, however deep they may have been in mortal sin. Indeed, he expressly concedes as much in his discussion of the observance of the precepts of the Law (*in Sentences IV. 1. 1 ad 4*). It is certain that the Jews who were abroad from Judaea,

whether or not they were in a state of sin, were invincibly ignorant of baptism and the Christian faith. And hence it follows that, just as there could then be a question of invincible ignorance about these matters, so too the same ignorance could now exist amongst those to whom no announcement concerning baptism was ever made. But the source of the error of these doctors is that they believe that if we allow the existence of invincible ignorance concerning baptism or the Christian faith, it will immediately follow that a man can gain salvation without baptism or the faith of Christ. But this does not follow at all. The barbarians who have never received any news of the faith or Christian religion will be damned for their mortal sins or their idolatry; but not for the sin of unbelief, as St Thomas says (*ST* II-II, 10, 1). If they were to do their best to live well according to the law of nature, it is a fact that the Lord would take care to enlighten them concerning the name of Christ. But it does not follow from this that, if they live evil lives, their ignorance or lack of belief in baptism and the Christian religion should be counted against them as a sin.⁶⁶

2. MY SECOND CONCLUSION is that *the barbarians are not bound to believe from the first moment that the Christian faith is announced to them*, in the sense of committing a mortal sin merely by not believing a simple announcement, unaccompanied by miracles or any other kind of proof or persuasion, that the true religion is Christian, and that Christ is the Saviour and Redeemer of the universe.⁶⁷

§34 The proof follows from my discussion of the first proposition. If they were excused before they heard anything about the Christian religion, then again they are not obliged by a simple statement or announcement of this kind. Such an announcement is no argument or reason for believing; indeed, as Cajetan says (in *ST* II-II, 1, 4 ad 2), it is foolhardy and imprudent of anyone to believe a thing without being sure it comes from a trustworthy source, especially in matters to do with salvation. But the barbarians could not be sure of this, since they did not know who or what kind of people they were who preached the new religion to them. This is confirmed by St Thomas, who says that things which are of faith visibly and clearly belong to the realm of the credible; the faithful man would not believe them unless he could see that they were credible,

66. Palacios Rubios had argued in his *Libellus de insulis Oceani* (1512), on the basis of the same authorities used by Vitoria in this article, that although the Indians were clearly in a state of invincible ignorance, if they had been a more deserving race God would have sent them missionaries, as he sent St Peter to Cornelius, St Paul to the Corinthians, and St Augustine to the English (Pagden 1986: 53).

67. As Fidal 1958: 15-16 points out, the reference is once again to the *requerimiento* (see the Glossary, s.v.).

either by palpable signs or by some other means (*ST II-II. 1. 4 ad 2, 1. 5 ad 1*). Therefore where there are no such signs nor any other persuasive factor, the barbarians are not obliged to believe. A further confirmation is that if the Saracens were to preach their own sect in this simple way to the barbarians at the same time as the Christians, it is clear that the barbarians would not be obliged to believe the Saracens. Therefore, since they would not be able or obliged to guess which of these two was the truer religion without some more visible proof of probability on one side or the other, the barbarians are not be obliged to believe the Christians either, unless the latter put forward some other motive or persuasion to convince them. To do so would be to believe too readily, like the ‘light-headed man’ (*Ecclus. 19: 4*). And this is confirmed by the Lord’s words: ‘if I had not done among them the works which none other man did, they had not had sin’ (*John 15: 24*). Where there are no miraculous signs or other reasons for belief, there will be no sin.

§35 From this proposition it follows that if the faith is proposed to the barbarians only in this way and they do not accept it, the Spaniards cannot use this pretext to attack them or conduct a just war against them. This is obvious, because the barbarians are innocent on this count, and have not done any wrong to the Spaniards.

The corollary is proved by St Thomas’ teaching that for the just war a just cause is required; namely, that those who are attacked have deserved attack by some culpable action (*ST II-II. 40. 1*). Hence Augustine says (*Quaestiones in Heptateuchum VI. 10*):

The usual definition of just wars is that they are those which avenge injustices (*iniuriae*), when a nation or city is to be scourged for having failed to punish the wrongdoings its own people or to restore property which has been unjustly stolen.⁶⁸

If the barbarians have done no wrong, there is no just cause for war; this is the opinion shared by all the doctors, not only theologians but also jurists such as Hostiensis, Innocent IV, and others; Cajetan expounds it eloquently in his commentary on *ST II-II. 66. 8*. I know of no author who opposes it. Therefore this would not be a legitimate title for occupying the lands of the barbarians and despoiling their previous owners of them.

§36 3. MY THIRD CONCLUSION is that *if the barbarians are asked and advised to listen to peaceful persuasion about religion, but refuse to do so, they incur unpardonable mortal sin*. The proof is that if their own beliefs are

68. Vitoria cites this fundamental definition of the just war at second hand, from Aquinas, citing it incorrectly as *Liber 83 quaestionum* (see *On the Law of War* 1. 1, footnote 6).

gravely mistaken, as we suppose they are, they can have no convincing or probable reasons for them, and are therefore obliged at least to listen and consider what anyone may advise them to hear and meditate concerning religion. Furthermore, belief in Christ and baptism is necessary for their own salvation: 'he that believeth and is baptized shall be saved, but he that believeth not shall be damned' (Mark 16: 16). But they cannot believe if they have not heard (Rom. 10: 14). Hence they are obliged to listen, because if they were not obliged to hear they would be beyond all salvation through no fault of their own.

§37 4. MY FOURTH CONCLUSION is that *if the Christian faith is set before the barbarians in a probable fashion*, that is with provable and rational arguments and accompanied by manners both decent and observant of the law of nature, such as are themselves a great argument for the truth of the faith, and if this is done not once or in a perfunctory way, but diligently and observantly, *then the barbarians are obliged to accept the faith of Christ under pain of mortal sin*. The proof follows from the third proposition; if they are obliged to listen, then they are also obliged to acquiesce with what they hear if it is reasonable. This is clear from the passage: 'Go ye into all the world, and preach the gospel to every creature; he that believeth and is baptized shall be saved, but he that believeth not shall be damned' (Mark 16: 15-16). And also from: 'there is none other name under heaven given among men, whereby we must be saved' (Acts 4: 12).

§38 5. MY FIFTH CONCLUSION is that *it is not sufficiently clear to me that the Christian faith has up to now been announced and set before the barbarians in such a way as to oblige them to believe it under pain of fresh sin*. By this I mean that, as explained in my second proposition, they are not bound to believe unless the faith has been set before them with persuasive probability. But I have not heard of any miracles or signs, nor of any exemplary saintliness of life sufficient to convert them. On the contrary, I hear only of provocations, savage crimes, and multitudes of unholy acts. From this, it does not appear that the Christian religion has been preached to them in a sufficiently pious way to oblige their acquiescence; even though it is clear that a number of friars and other churchmen have striven industriously in this cause, by the example of their lives and the diligence of their preaching, and this would have been enough, had they not been thwarted by others with different aims.

§39 6. MY SIXTH CONCLUSION is that, however probably and sufficiently the faith may have been announced to the barbarians and then rejected by them, *this is still no reason to declare war on them and despoil them of their goods*. This conclusion is expressed by St Thomas in his *ST II-II*, 10. 8, where he says that unbelievers who have never taken up the faith such

as the pagans and Jews are by no means to be compelled to believe. And this is the common conclusion of the doctors of both canon and civil law. The proof is that belief is a matter of will, but fear considerably diminishes the freedom of will (Aristotle, *Nicomachean Ethics* 1110^a1–12). To come to the mysteries and sacraments of Christ merely out of servile fear would be sacrilege. A further proof is the passage in Gratian's canon *De Iudaeis* (*Decretum* D.45. 5): 'Concerning the Jews, the holy Council laid down that no one should use force to compel belief, since God is merciful to those He wishes, and hardens the hearts of those He wishes' (*Concilium IV Toletanum* §56). There is no doubt that this opinion of the Council of Toledo means that threats and terror should not be used to bring the Jews to the faith. And St Gregory the Great expressly says the same in the canon *Qui sincera*: 'those who sincerely desire to lead those outside the Christian religion to perfect faith should be careful to use blandishments, not cruelty' (*Decretum* D.45. 3). Those who act otherwise and decide to tear them from their accustomed religious observances and rites under this pretext are serving their own ends, not God's. The proposition is also proved by the use and custom of the Church, since no Christian emperor, with the benefit of the advice of the most holy and wise popes, has ever declared war on unbelievers simply because they refused to accept the Christian religion.

Besides, war is no argument for the truth of the Christian faith. Hence the barbarians cannot be moved by war to believe, but only to pretend that they believe and accept the Christian faith; and this is monstrous and sacrilegious. Duns Scotus says that it is a religious act for princes to compel unbelievers to believe with threats and terror (in *Sentences* IV. 4. 9); but this can only be understood to refer to unbelievers who are already the subjects of Christian princes. Of such subjects I shall speak later. But the barbarians do not belong to this group, and therefore I do not believe that Scotus would have applied his assertion to these barbarians of ours.

It is therefore clear that this title to the conquest of the lands of the barbarians, too, is neither applicable nor legitimate.

Question 2, Article 5: Fifth unjust title, the sins of the barbarians

This next title is also seriously put forward by those who say that, although the barbarians may not be invaded because of their unbelief or their refusal to accept the Christian faith, war may nevertheless be declared on them for their other mortal sins, which according to the proponents of this argument are manifold, and very serious to boot.

Concerning mortal sins, however, they make a distinction. Some sins, they say, are not against natural law, but only against positive divine law; and for these the barbarians cannot be invaded. But others, such as cannibalism, incest with mothers and sisters, or sodomy, are against nature; and for these sins they may be invaded and compelled to give them up. The reasoning behind this is that in the former category of sins against positive law, it cannot be demonstrated by evidence that they are sinful, whereas in the case of sins against the law of nature the barbarians can be shown that they are committing an offence against God, and may consequently be compelled not to offend Him further. Again, they can be forced to observe a law which they themselves profess; and this is the case with natural law. This is the opinion of St Antonino of Florence (*Summa theologica* III, 22, 5 §8), following Agostino Trionfo (*De potestate ecclesiastica* I, 23, 4); and the same opinion is held by Silvestro Mazzolini da Priero (*Summa Sylvestrina*, s.v. papa §7), and Innocent IV in his commentary on the decretal *Quod super his* (X, 3, 34, 8), where he expressly says: 'I believe that if the gentiles break natural law, which is the only law they have, they may be punished by the pope'. He adduces to this purpose the fact that the Sodomites were punished by God (Gen. 19); 'since God's judgments are examples to us, I do not see why the pope, who is the vicar of Christ, should not be empowered to do the same'. So says Innocent; and by this argument, they might also, on the pope's authority, be punished by Christian princes.

§40 BUT ON THE OTHER HAND I adduce the following proposition: *Christian princes, even on the authority of the pope, may not compel the barbarians to give up their sins against the law of nature, nor punish them for such sins.*

I REPLY with the following proofs. First of all, our opponents' presupposition that the pope has jurisdiction over the barbarians is false, as I have said above (*On the American Indians* 2. 2).

Second, they either interpret 'sins against the law of nature' in a universal sense, as including theft, fornication, and adultery; or in the special sense of 'sins against nature' as defined by St Thomas (*ST* II-II 154 11–12), that is to say, not only 'against natural law' but 'against the natural order', or what is described by the word 'uncleanness' in 2 Cor. 12: 21, which the *Glossa ordinaria* explains as pederasty, buggery with animals, or lesbianism, which are referred to also in Rom. 1: 24–7.⁶⁹ Now if they interpret the expression exclusively in the second of these

69. On the significance of the association between these crimes 'against the natural order' see Pagden 1986: 86–7.

two ways, one may argue against them that murder is as serious a sin, or more serious; and therefore it is clear that if it is lawful to punish men for these 'sins against nature', it must also be lawful to punish them for murder; and similarly, blasphemy is as serious a sin, and so it is obvious that one may punish them for blasphemy too, and so on. But if they extend their interpretation to include the general sense of 'any sin against the law of nature', the reply is that it is not lawful to punish them for fornication, and therefore it is not lawful to punish them for the other sins against natural law. The minor premiss is clear from 1 Cor. 5: 9–13, which says: 'I wrote unto you in an epistle not to company with fornicators . . . and not to keep company, if any man *that is called a brother* be a fornicator or an idolater', and then adds: 'For what have we to do to judge them also that are without?' St Thomas expounds this as meaning that prelates have received power only over those who have subjected themselves to the faith (in 1 Cor. 5: 12, lect. 3). It is quite clear, then, that Paul means that the judgment of unbelievers, whether they be fornicators or idolaters, is none of his business.

A further argument is that not all sins against natural law can be demonstrated to be so by evidence, at least to the satisfaction of all men. Furthermore, to make this assertion is tantamount to saying that the barbarians may be conquered because of their unbelief, since they are all idolaters. Besides, the pope may not make war on Christians because they are fornicators or robbers, or even because they are sodomites; nor can he confiscate their lands and give them to other princes; if he could, since every country is full of sinners, kingdoms could be exchanged every day. And a further confirmation is that such sins are more serious in Christians, who know them to be sins, than in the barbarians, who do not. Besides, it would be extraordinary that the pope should be able to pronounce judgments and inflict punishments on unbelievers, and yet prevented from making laws for them.

And there is a further argument, which seems to conclude the matter. Either the barbarians are obliged to suffer the penalties ordained for these sins, or they are not. If they are not, the pope is not empowered to inflict them. If they are, then they are obliged to recognize the pope as their lord and legislator; but if this is the case, then the very fact that they refuse to recognize him as such is a reason for declaring war upon them. But even my opponents deny this conclusion, as I have said above. It would indeed be extraordinary that they should be able to deny the authority and jurisdiction of the pope with impunity, and yet be obliged to suffer his judgments. Again, those who are not Christians cannot accept the judgment of the pope, since the pope cannot condemn or punish them by any right other than that he is the vicar of Christ. But

all these opponents, St Antonino and Silvestro Mazzolini da Priero as well as Agostino Trionfo and even Innocent IV himself, admit that unbelievers cannot be punished on the grounds that they have not accepted Christ. Therefore they cannot be punished because they do not accept the judgment of the pope; the latter presupposes the former.

And a confirmation that neither this nor the preceding title is sufficient is that even in the Old Testament, where affairs were conducted by force of arms, the people of Israel never occupied the lands of the unbelievers either on the grounds that they were infidels and idolaters or because they were otherwise sinners against nature, even though they were sinful in many ways, being idolaters and sinners against nature, for instance by sacrificing their sons and daughters to demons. They only conquered such peoples by God's special gift, or because they refused to allow them free passage, or because they had wronged them first.

Besides, what do these opponents mean by 'professing' the law of nature? If they mean 'knowing what it is', the barbarians do not have complete knowledge of it. But if they mean 'being willing to observe the law of nature', I counter by pointing out that, in this case, they must also mean 'willing to observe the whole of Christ's law', since if they knew that Christian law was divine law, they would be willing to observe it. In this sense, they no more 'profess' divine law than Christian law.

And again, we actually have better proofs to show that Christ's law is true and God-given than to show that fornication is evil or that the other things prohibited by natural law are to be avoided. Therefore, if the barbarians can be forced to keep the law of nature because it can be proved, they can also be forced to keep the law of the Gospels; but this is indeed an incredible deduction.

Question 2, Article 6: Sixth unjust title, by the voluntary choice of the barbarians

This is yet another title which can be and is alleged. Whenever the Spaniards first make contact with the barbarians, they notify them that the king of Spain has sent them for their benefit, and advise them to take him and accept him as their lord and king. And the barbarians have replied that they agree to do so. And 'nothing is so natural as that the wishes of an owner (*dominus*) who wishes to transfer his property to another should be ratified' (*Institutions* II. 1. 40).

BUT ON THE OTHER HAND I propose the proposition that this title, too, is inapplicable. This is clear, first of all, because the choice ought not to

have been made in fear and ignorance, factors which vitiate any freedom of election, but which played a leading part in this particular choice and acceptance. The barbarians do not realize what they are doing; perhaps, indeed, they do not even understand what it is the Spaniards are asking of them. Besides which, the request is made by armed men, who surround a fearful and defenceless crowd. Furthermore, since the barbarians already had their own true masters and princes, as explained above, a people cannot without reasonable cause seek new masters, which would be to the detriment of their previous lords. Nor, on the contrary, can the masters themselves elect a new prince without the assent of the whole people. As I have said before, they are not obliged to believe in the Christian religion, nor in the dominion of the pope, and hence not in the dominion of the emperor either.⁷⁰

Since, therefore, in these methods of choice and acceptance some of the requisite conditions for a legitimate choice were lacking, on the whole this title to occupying and conquering these countries is neither relevant nor legitimate.

Question 2, Article 7: Seventh unjust title, by special gift from God

Here is the last title that may be alleged. Some, I know not who,⁷¹ say that the Lord has by his special judgment damned all these barbarians to perdition for their abominations, and delivered them into the hands of the Spaniards just as he once delivered the Canaanites into the hands of the Jews (Num. 21: 3).

But I am unwilling to enter into a protracted dispute on this argument, since it is dangerous to give credit to anyone who proclaims a prophecy of this kind contrary to common law and the rules of Scripture unless his teaching is confirmed by some miracle. The proclaimers of this prophecy offer no such miracles.

Besides, even if it were true that the Lord had decided to bring about the destruction of the barbarians, it does not follow that a man who destroyed them would thereby be guiltless. The kings of Babylon who led their armies against Jerusalem and enslaved the children of Israel were not guiltless, even though all this in fact came about by the special

70. The last sentence is omitted by *LS*.

71. The author of this argument is identified by Barbier (Vitoria 1966, n. *ad loc*) as Martín Fernández de Enciso, in his memorial of 1513 which was later incorporated in the *requerimiento* (see the Glossary, s.v.).

providence of God, as had often been foretold. Nor did Jeroboam act righteously when he led the people of Israel in revolt against Rehoboam, although this too was done by the counsel of the Lord, and as the Lord had threatened through the mouth of the prophet Ahijah.

And if only the sins of some Christians were less grave, apart from the one sin of unbelief, than those of these barbarians! It is written: 'Beloved, believe not every spirit, but try the spirits whether they are of God' (1 John 4: 1). As St Thomas says, the revelations of the Holy Spirit are given to perfect the virtues, so that where faith, authority, or prudence⁷² show what is to be done, we need not appeal to the revelations of the spirit (ST I-II. 68. 2).

THIS CONCLUDES the discussion of the false and irrelevant titles for the conquest of the countries of the barbarians.

But I should remark that I have never seen any written work on this question, nor been personally present at any debate or council on the matter.⁷³ It is therefore possible that someone has elsewhere constructed a reasonable argument to establish the title and justice of this business from one of the titles mentioned above. But speaking for myself, I am unable to find any solution apart from the ones expounded here. This being so, if there were no other titles than these, it would indeed look grim for the salvation of our princes.⁷⁴ 'For what is a man profited', says the Lord, 'if he shall gain the whole world, and lose himself, or be cast away?' (Matt. 16: 26; Mark 8: 36; Luke 9: 25).

Question 3: The just titles by which the barbarians of the New World passed under the rule of the Spaniards

I shall now discuss the legitimate and relevant titles by which the barbarians could have come under the control of the Spaniards.

72. *P prudentia : providentia L.*

73. Although it is true that Vitoria did not participate in any of the meetings to discuss the affair of the Indies, and nowhere makes explicit reference to the writings of Palacios Rubios or any of the members of the Junta of Burgos of 1512-13 (see the Introduction, p. xxiii), this statement would seem to contradict, probably for reasons of prudence, the remarks made in the opening passage of the relection (intro., p. 238).

74. *LS* add: 'or rather, since princes are guided by the advice of others, for the conscience of those whose business it is to find a solution to the problem'.

§1 **Question 3, Article 1: First just title, of natural partnership and communication**

MY FIRST CONCLUSION on this point will be that *the Spaniards have the right to travel and dwell in those countries, so long as they do no harm to the barbarians, and cannot be prevented by them from doing so.*⁷⁵

§2 The first proof comes from the law of nations (*ius gentium*), which either is or derives from natural law, as defined by the jurist: ‘What natural reason has established among all nations is called the law of nations’ (*Institutions* I. 2. 1). Amongst all nations it is considered inhuman to treat strangers and travellers badly without some special cause, humane and dutiful to behave hospitably to strangers. This would not be the case if travellers were doing something evil by visiting foreign nations. Second, in the beginning of the world, when all things were held in common, everyone was allowed to visit and travel through any land he wished. This right was clearly not taken away by the division of property (*diuisio rerum*); it was never the intention of nations to prevent men’s free mutual intercourse with one another by this division. Certainly it would have been thought inhuman to do so in the time of Noah. Third, all things which are not prohibited or otherwise to the harm and detriment of others are lawful. Since these travels of the Spaniards are (as we may for the moment assume) neither harmful nor detrimental to the barbarians, they are lawful.

Fourth, it would not be lawful for the French to prohibit Spaniards from travelling or even living in France, or vice versa, so long as it caused no sort of harm to themselves; therefore it is not lawful for the barbarians either. Fifth, exile is counted amongst the punishments for capital crimes, and therefore it is not lawful to banish visitors who are innocent of any crime. Sixth, it is an act of war to bar those considered as enemies from entering a city or country, or to expel them if they are already in it. But since the barbarians have no just war against the Spaniards, assuming they are doing no harm, it is not lawful for them to bar them from their homeland.

A seventh proof is provided by Virgil’s verses:

What men, what monsters, what inhuman race,
What laws, what barbarous customs of the place,
Shut up a desert shore to drowning men,
And drive us to the cruel seas again!

(*Aeneid* I. 539–40, Dryden’s translation)

75. On the denial of right of passage as an *iniuria* sufficient for war (Augustine, *Quaestiones in Heptateuchum* IV. 44; *Decretum* C.23. 2. 3) see Barnes 1982: 781.

An eighth proof is given in the words of Scripture: 'Every living creature loveth his like' (Ecclus. 13: 15), which show that amity (*amicitia*) between men is part of natural law, and that it is against nature to shun the company of harmless men. A ninth argument is the passage, 'I was a stranger and ye took me not in' (Matt. 25: 43), from which it is clear that, since it is a law of nature to welcome strangers, this judgment of Christ is to be decreed amongst all men. And a tenth, the jurist's determination that by natural law running water and the open sea, rivers, and ports are the common property of all, and by the law of nations (*ius gentium*) ships from any country may lawfully put in anywhere (*Institutions* II. 1. 1-4); by this token these things are clearly public property from which no one may lawfully be barred, so that it follows that the barbarians would do wrong to the Spaniards if they were to bar them from their lands. Eleventh, the barbarians themselves admit all sorts of other barbarians from elsewhere, and would therefore do wrong if they did not admit the Spaniards.

Twelfth, if the Spaniards were not allowed to travel amongst them, this would be either by natural, divine, or human law. But they are certainly allowed to do so by divine and natural law. But if there were a human enactment (*lex*) which barred them without any foundation in divine or natural law, it would be inhumane and unreasonable, and therefore without the force of law.

Thirteenth, either the Spaniards are their subjects, or they are not. If they are not their subjects, the barbarians cannot enjoin prohibitions on them; if they are their subjects, then the barbarians ought to treat them fairly. And fourteenth, the Spaniards are the barbarians' neighbours, as shown by the parable of the Samaritan (Luke 10: 29-37); and the barbarians are obliged to love their neighbours as themselves (Matt. 22: 39, and may not lawfully bar them from their homeland without due cause. As St Augustine says, 'when one says *Love thy neighbour*, it is clear that every man is your neighbour' (*De doctrina Christiana* I. 30. 32).

§3 MY SECOND PROPOSITION is that *the Spaniards may lawfully trade among the barbarians, so long as they do no harm to their homeland*. In other words, they may import the commodities which they lack, and export the gold, silver, or other things which they have in abundance; and their princes cannot prevent their subjects from trading with the Spaniards, nor can the princes of Spain prohibit commerce with the barbarians.

The proof follows from the first proposition. In the first place, the law of nations (*ius gentium*) is clearly that travellers may carry on trade so long as they do no harm to the citizens; and second, in the same way it can be proved that this is lawful in divine law. Therefore any human enactment (*lex*) which prohibited such trade would indubitably be

unreasonable. Third, their princes are obliged by natural law to love the Spaniards, and therefore cannot prohibit them without due cause from furthering their own interests, so long as this can be done without harm to the barbarians. Fourth, to do so would appear to fly in the face of the old proverb, 'do as you would be done by'.

In sum, it is certain that the barbarians can no more prohibit Spaniards from carrying on trade with them, than Christians can prohibit other Christians from doing the same. It is clear that if the Spaniards were to prohibit the French from trading with the Spanish kingdoms, not for the good of Spain but to prevent the French from sharing in any profits, this would be an unjust enactment, and contrary to Christian charity. But if this prohibition cannot justly be proscribed in law, neither can it be justly carried out in practice, since an unjust law becomes inequitable precisely when it is carried into execution. And 'nature has decreed a certain kinship between all men' (*Digest* I. 1. 3), so that it is against natural law for one man to turn against another without due cause; man is not a 'wolf to his fellow man', as Ovid says, but a fellow.⁷⁶

§4 MY THIRD PROPOSITION is that *if there are any things among the barbarians which are held in common both by their own people and by strangers, it is not lawful for the barbarians to prohibit the Spaniards from sharing and enjoying them.* For example, if travellers are allowed to dig for gold in common land or in rivers or to fish for pearls in the sea or in rivers, the barbarians may not prohibit Spaniards from doing so. But the latter are only allowed to do this kind of thing on the same terms as the former, namely without causing offence to the native inhabitants and citizens.

The proof of this follows from the first and second propositions. If the Spaniards are allowed to travel and trade among the barbarians, they are allowed to make use of the legal privileges and advantages conceded to all travellers.

Secondly, in the law of nations (*ius gentium*) a thing which does not belong to anyone (*res nullius*) becomes the property of the first taker, according to the law *Ferae bestiae* (*Institutions* II. 1. 12); therefore, if gold in the ground or pearls in the sea or anything else in the rivers has not been appropriated, they will belong by the law of nations to the first taker, just like the little fishes of the sea.⁷⁷ And there are certainly many

76. The proverb *homo homini lupus* does not occur in Ovid, but cf. *Tristia* V. 8 ('Though men in shape, they scarce deserve the name; | their savagery doth put the wolves to shame', Burton's translation). This formulation, from Plautus, *Asinaria* 495, was popularized during the Renaissance by its inclusion in Erasmus' *Adagia*.

77. Compare 2. 3, where the relevance of the same law is denied with respect to *dominium rerum*. The interpretation of the Roman text and status of the *ius gentium* caused Vitoria and his pupils some difficulty (see the Introduction, pp xv – xvi).

things which are clearly to be settled on the basis on the law of nations (*ius gentium*), whose derivation from natural law is manifestly sufficient to enable it to enforce binding rights. But even on the occasions when it is not derived from natural law, the consent of the greater part of the world is enough to make it binding, especially when it is for the common good of all men. If, after the dawn of creation or after the refashioning of the world following the Flood, the majority of men decided that the safety of ambassadors should everywhere be inviolable, that the sea should be common property, that prisoners of war should be enslaved, and likewise that would be inexpedient to drive strangers out of one's land, then all these things certainly have the force of law, even if a minority disagree.

§5 MY FOURTH PROPOSITION is that if children born in the Indies of a Spanish father wish to become citizens (*cives*) of that community, they cannot be barred from citizenship or from the advantages enjoyed by the native citizens born of parents domiciled in that community. The proof is that the law of nations (*ius gentium*) clearly defines a 'citizen' (*ciues*) as a man born in a community (*ciuitas*) (*Codex X. 40. 7*). The confirmation is that man is a civil animal (*animal ciuile*), but a man born in one community is not a citizen of another community; therefore, if he is not a citizen of the first community, he will not be a citizen of any community, and this would be inequitable by the law of nature and of nations (*ius naturale et gentium*).

Indeed, if anyone were willing to take up domicile in one of these barbarian communities, for example because he had taken a wife there or for one of the other reasons by which denizens customarily acquire citizenship, it does not seem to me he could be prohibited from doing so, any more than the other inhabitants. Consequently, it seems he would enjoy the same privileges as the rest, at least as long as he accepted the same burdens as they.

It is also relevant that hospitality is commended in Scripture: 'use hospitality one to another without grudging' (1 Pet. 4: 9), and, speaking of bishops, 'a bishop must be given to hospitality' (1 Tim. 3: 2). It follows that to refuse to welcome strangers and foreigners is inherently evil.

§6 MY FIFTH PROPOSITION is that if the barbarians attempt to deny the Spaniards in these matters which I have described as belonging to the law of nations (*ius gentium*), that is to say from trading and the rest, the Spaniards ought first to remove any cause of provocation by reasoning and persuasion, and demonstrate with every argument at their disposal that they have not come to do harm, but wish to dwell in peace and travel without any inconvenience to the barbarians. And they should

demonstrate this not merely in words, but with proof. As the saying goes, 'in every endeavour, the seemly course for wise men is to try persuasion first' (Terence, *Eunuchus* 789). But if reasoning fails to win the acquiescence of the barbarians, and they insist on replying with violence, the Spaniards may defend themselves, and do everything needful for their own safety. It is lawful to meet force with force.⁷⁸ And not only in this eventuality, but also if there is no other means of remaining safe, they may build forts⁷⁹ and defences; and if they have suffered an offence, they may on the authority of their prince seek redress for it in war, and exercise the other rights of war. The proof is that the cause of the just war is to redress and avenge an offence, as said above in the passage quoted from St Thomas (*ST* II-II. 40. 1; see above, 2. 4 §11). But if the barbarians deny the Spaniards what is theirs by the law of nations, they commit an offence against them. Hence, if war is necessary to obtain their rights (*ius suum*), they may lawfully go to war.

But I should remark that these barbarians are by nature cowardly, foolish, and ignorant besides. However much the Spaniards may wish to reassure them and convince them of their peaceful intentions, therefore, the barbarians may still be understandably fearful of men whose customs seem so strange, and who they can see are armed and much stronger than themselves. If this fear moves them to mount an attack to drive the Spaniards away or kill them, it would indeed be lawful for the Spaniards to defend themselves, within the bounds of blameless self-defence; but once victory has been won and safety secured, they may not exercise the other rights of war against the barbarians such as putting them to death or looting and occupying their communities, since in this case what we may suppose were understandable fears made them innocent. So the Spaniards must take care for their own safety, but do so with as little harm to the barbarians as possible since this is a merely defensive war. It is not incompatible with reason, indeed, when there is right on one side and ignorance on the other, that a war may be just on both. For instance, the French hold Burgundy in the mistaken but colourable belief that it belongs to them. Now our emperor Charles V has a certain right to that province and may seek to recover it by war; but the French may defend it.⁸⁰ The same may be true of the barbarians. This is a consideration which must be given great weight. The laws of war against really harmful and offensive enemies are quite different from those

78. Vitoria alludes to the famous principle *Vim ui repellere licet* (*Digest* I. 1. 3), which he was to discuss again in *On the Law of War* 1. 1.

79. *P* arces : artes *L*.

80. Compare *On the Law of War* 5. 3.

against innocent or ignorant ones. The provocations of the Pharisees are to be met with quite a different response from the one appropriate to weak and childish foes.

§7 MY SIXTH PROPOSITION is that if all other measures to secure safety from the barbarians besides conquering their communities and subjecting them have been exhausted, the Spaniards may even take this measure. The proof is that the aim of war is peace and security, as St Augustine says in his letter to Boniface (*Ep.* 189. 6). Therefore, once it has become lawful for the Spaniards to take up war or even to declare it themselves for the reasons stated above, it becomes lawful for them to do everything necessary to the aim of war, namely to secure peace and safety.

§8 My seventh proposition goes further: once the Spaniards have demonstrated diligently both in word and deed that for their own part they have every intention of letting the barbarians carry on in peaceful and undisturbed enjoyment of their property, if the barbarians nevertheless persist in their wickedness and strive to destroy the Spaniards, they may then treat them no longer as innocent enemies, but as treacherous foes against whom all rights of war can be exercised, including plunder, enslavement, deposition of their former masters, and the institution of new ones. All this must be done with moderation, in proportion to the actual offence. The conclusion is evident enough: if it is lawful to declare war on them, then it is lawful to exercise to the full the rights of war. And is confirmed by the fact that all things are lawful against Christians if they ever fight an unjust war; the barbarians should receive no preferential treatment because they are unbelievers, and therefore can be proceeded against in the same way. It is the general law of nations (*ius gentium*) that everything captured in war belongs to the victor, as stated in the laws *De captivis* and *Si quid in bello* (*Digest* XLIX. 15. 28 and 24), in the canon *Ius gentium* (*Decretum* D.1. 9), and more expressly still in the law *Item ea quae ab hostibus* (*Institutions* II. 1. 17), which reads: 'in the law of nations, anything taken from the enemy immediately becomes ours, even to the extent that their people become our slaves'. Furthermore, as the doctors explain in their discussions of war, the prince who wages a just war becomes *ipso jure* the judge of the enemy, and may punish them judicially and sentence them according to their offence.

The foregoing is confirmed by the fact that ambassadors are inviolable in the law of nations (*ius gentium*). The Spaniards are the ambassadors of Christendom, and hence the barbarians are obliged at least to give them a fair hearing and not expel them.

THIS, THEN, IS THE FIRST TITLE by which the Spaniards could have seized the lands and rule of the barbarians, so long as it was done without

trickery or fraud and without inventing excuses to make war on them. But on these grounds, if the barbarians allowed the Spaniards to carry on their business in peace among them, the Spaniards could make out no more just a case for seizing their goods than they could for seizing those of other Christians.

§9 **Question 3, Article 2: Second possible title, for the spreading of the Christian religion**

MY FIRST PROPOSITION in support of this is that *Christians have the right to preach and announce the Gospel in the lands of the barbarians*. This conclusion is clear from the passage 'Go ye into all the world and preach the gospel to every creature' (Mark 16: 15); and 'the word of God is not bound' (2 Tim. 2: 9). Second, it is clear from the preceding article, since if they have the right to travel and trade among them, then they must be able to teach them the truth if they are willing to listen, especially about matters to do with salvation and beatitude, much more so than about anything to do with any other human subject. Third, if it were not lawful for Christians to visit them to announce the Gospel, the barbarians would exist in a state beyond any salvation. Fourth, brotherly correction is as much part of natural law as brotherly love; and since all those peoples are not merely in a state of sin, but presently in a state beyond salvation, it is the business of Christians to correct and direct them. Indeed, they are clearly obliged to do so. Fifth and finally, they are our neighbours, as I have said above (3. 1 §2 *ad fin.*), 'and God gave them commandment, each man concerning his neighbour' (Ecclus. 17: 14). Therefore it is the business of Christians to instruct them in the holy things of which they are ignorant.

§10 MY SECOND PROPOSITION is that although this right is common and lawful for all, *the pope could nevertheless have entrusted this business to the Spaniards and forbidden it to all others*. The proof is that although the pope is not a temporal lord, as shown above (2. 2), he nevertheless has power in temporal things insofar as they concern spiritual things. And since it is the pope's special business to promote the Gospel throughout the world, if the princes of Spain are in the best position to see to the preaching of the Gospel in those provinces, the pope may entrust the task to them, and deny it to all others. He may restrict not only the right to preach, but also the right to trade, if this is convenient for the spreading of the Christian religion, because he has the power to order temporal matters for the convenience of spiritual ones. So if these things are convenient for this purpose, they belong to the authority and

power of the supreme pontiff. And it is quite clear that they are convenient, because if there were an indiscriminate rush to the lands of these barbarians from other Christian countries, the Christians might very well get in each other's way and start to quarrel. Peace would be disturbed, and the business of the faith and the conversion of the barbarians upset. Besides, the princes of Spain were the first to undertake the voyages of discovery, at their own expense and under their own banners; and since they were so fortunate as to discover the New World, it is just that this voyage should be denied to others, and that they alone should enjoy the fruits of their discoveries. In the same way, the pope has always had the power to distribute the territories of Saracens among Christian princes for the preservation of peace and the progress of religion, to prevent one prince from trespassing on the lands of another. So he could also make new princes for the furtherance of religion, especially in places where there had never before been any Christian princes.

§11 MY THIRD PROPOSITION is that if the barbarians permit the Spaniards to preach the Gospel freely and without hindrance, then *whether or not they accept the faith, it will not be lawful to attempt to impose anything on them by war, or otherwise conquer their lands*. This was proved above in my refutation of the fourth unjust title (2. 4); and it is obvious, because no war can be just when not preceded by some wrong, as St Thomas says (ST II-II. 40. 1).

§12 MY FOURTH CONCLUSION is that if the barbarians, either in the person of their masters or as a multitude, obstruct the Spaniards in their free propagation of the Gospel, the Spaniards, after first reasoning with them to remove any cause of provocation, *may preach and work for the conversion of that people even against their will*, and may if necessary take up arms and declare war on them, insofar as this provides the safety and opportunity needed to preach the Gospel. And the same holds true if they permit the Spaniards to preach, but do not allow conversions, either by killing or punishing the converts to Christ, or by deterring them by threats or other means. This is obvious, because such actions would constitute a wrong committed by the barbarians against the Spaniards, as I have explained, and the latter therefore have just cause for war. Second, it would be against the interests of the barbarians themselves, which their own princes may not justly harm; so the Spaniards could wage war on behalf of their subjects for the oppression and wrong which they were suffering, especially in such important matters.

FROM THIS CONCLUSION IT FOLLOWS that on this count too, if the business of religion cannot otherwise be forwarded, that the Spaniards may lawfully conquer the territories of these people, deposing their old masters and

setting up new ones and carrying out all the things which are lawfully permitted in other just wars by the law of war, so long as they always observe reasonable limits and do not go further than necessary. They must always be prepared to forego some part of their rights rather than risk trespassing on some unlawful thing, and always direct all their plans to the benefit of the barbarians rather than their own profit, bearing constantly in mind the saying of St Paul: 'all things are lawful unto me, but all things are not expedient' (1 Cor. 6: 12). Everything that has been said so far is to be understood as valid in itself; but it may happen that the resulting war, with its massacres and pillage, obstructs the conversion of the barbarians instead of encouraging it. The most important consideration is to avoid placing obstructions in the way of the Gospel. If such is the result, this method of evangelization must be abandoned and some other sought. All that I have demonstrated is that this method is lawful *per se*. I myself have no doubt that force and arms were necessary for the Spaniards to continue in those parts; my fear is that the affair may have gone beyond the permissible bounds of justice and religion.

This, then, is the second possible legitimate title by which the barbarians may have fallen under the control of the Spaniards. But we must always keep steadfastly before us what I have just said, lest what is in substance lawful becomes by accident evil. Good comes from a single wholly good cause, whereas evil can come from many circumstances, according to Aristotle (*Nicomachean Ethics* 1106^b35) and Dionysius the Pseudo-Areopagite (*Divine Names* 4. 30).

§13 Question 3, [Article 3: Third just title, the protection of converts]

ANOTHER POSSIBLE TITLE derives from the previous one, which is that if any barbarians are converted to Christ, and their princes try to call them back to their idolatry by force or fear, the Spaniards may on these grounds, if no other means are possible, wage war on them and compel the barbarians to stop committing this wrong.⁸¹ If they persist, they may exercise all the rights of war, sometimes including the deposition of their masters, as in other just wars.

This third title may be advanced not only on grounds of religion, but on grounds of human amity (*amicitia*) and partnership (*societas*) since the barbarians' conversion to Christianity makes them friends and partners of us Christians, and we ought to 'do good unto all men, especially unto them who are of the household of faith' (Gal. 6: 10).

81. For the argument deployed here, compare *I On the Power of the Church* 5. 8.

§14 Question 3, [Article 4: Fourth just title, papal constitution of a Christian prince]

A FURTHER TITLE might be this: if a good proportion of the barbarians were converted to Christ either rightfully or wrongfully (that is, so long as they were true Christians, even if they had been converted by threats, terror, or other unpermissible means), *the pope might have reasonable grounds for removing their infidel masters and giving them a Christian prince, whether or not they asked him to do so.* The proof is that if this course was expedient for the preservation of the Christian faith, for fear that under infidel masters they might become apostates and fall away from the faith, or else suffer persecution from these same masters because of their faith, the pope is empowered to exchange their masters for the sake of the faith. The doctors confirm this, since, as St Thomas expressly says (*ST* II-II. 10. 10), the Church can liberate any Christian slave of an infidel master, even if he is in other respects a legitimate prisoner-of-war. Innocent IV makes this quite clear in his commentary on the decretal *Quod super his* (X. 3. 34. 8). And if this is the case, so much the more may he liberate other Christians who are subjects, and not so strictly bound to their masters as slaves. Another confirmation is that a wife is bound to her husband as much as, or even more than, a subject to his master, since the bond of marriage belongs to divine law whereas the bond between subject and lord does not. But a Christian wife may be freed of an infidel husband if he harasses her on account of her religion, as the Apostle makes clear in 1 Cor. 7: 15–16 (quoted in the decretal *Quanto te nouimus*, X. 4. 19. 7). Indeed, it has become customary in our day that if one partner of a marriage is converted to the faith, they become free of the infidel partner. So the Church may liberate all Christians from their obedience and subjection to infidel masters for the sake of the faith and to forestall danger, provided all provocation is avoided. And this is the fourth legitimate title which is advanced.

§15 Question 3, Article 5: Fifth just title, in defence of the innocent against tyranny

THE NEXT TITLE could be⁸² either on account of the personal tyranny of the barbarians' masters towards their subjects, or because of their tyrannical

82. As Barbier notes, Vitoria henceforward uses the more reserved conditional *posset* instead of *potest*. The argument in favour of 'humanitarian' wars, though accepted by Grotius, was 'against the spirit of just war theory' (Barnes 1982: 775–8). Vitoria discussed the barbarians' tyrannical laws' in *On Dietary Laws, or Self-Restraint*.

and oppressive laws against the innocent, such as human sacrifice practised on innocent men or the killing of condemned criminals for cannibalism. I assert that *in lawful defence of the innocent from unjust death, even without the pope's authority, the Spaniards may prohibit the barbarians from practising any nefarious custom or rite*. The proof is that God gave commandment to each man concerning his neighbour (Ecclus. 17: 14). The barbarians are all our neighbours, and therefore anyone, and especially princes, may defend them from such tyranny and oppression. A further proof is the saying: 'deliver them that are drawn unto death, and forbear not to deliver those that are ready to be slain' (Prov. 24: 11). This applies not only to the actual moment when they are being dragged to death; they may also force the barbarians to give up such rites altogether. If they refuse to do so, war may be declared upon them, and the laws of war enforced upon them; and if there is no other means of putting an end to these sacrilegious rites, their masters may be changed and new princes set up. In this case, there is truth in the opinion held by Innocent IV and Antonino of Florence, that sinners against nature may be punished (2. 5 above).⁸³ It makes no difference that all the barbarians consent to these kinds of rites and sacrifices, or that they refuse to accept the Spaniards as their liberators in the matter.⁸⁴ This could therefore be the fifth legitimate title.

§16 Question 3, Article 6: Sixth just title, by true and voluntary election

Imagine the barbarians recognized the wisdom and humanity of the Spaniards' administration, and one and all, both masters and subjects, spontaneously decided to accept the king of Spain as their prince. This could happen, and might be a legitimate title in natural law. Any commonwealth can elect its own master; for this, the unanimous consent of all is not necessary, a majority being clearly sufficient. As I have elsewhere argued (*On Civil Power* 2. 1), in matters which concern the good of the commonwealth, the decisions of the majority are binding, notwithstanding the opposition of the minority; otherwise no action could be taken for the benefit of the commonwealth, since it is difficult to obtain unanimous agreement for any proposal. It follows that

83. Wright notes in his edition (Vitoria 1917: 265, n. 13) that *G* adds the phrase: 'when their sins are to the detriment of the innocent (*quando sunt in detrimentum innocentium*)'. As Pidal remarks (1958: 26, n. 18), this would be a qualification of the views of Innocent IV and Antonino; but it is not attested in *PLS*.

84. *LS* add the explanatory phrase: 'it is not within their rights to deliver themselves or their children up to execution'.

if there was a Christian majority in any community or country, and they wished to have a Christian prince for the sake of the faith and for the common good, I believe they could elect such a prince and abandon their allegiance to their infidel masters, even against the opposition of the remainder of the population. By this I mean that they could elect a prince not only for themselves, but for the whole commonwealth. In this way the Franks changed princes for the good of their commonwealth, and transferred Childeric's crown to Pepin, the father of Charlemagne; this change of dynasty was approved by Pope Zacharias.⁸⁵ This, then, is the sixth title which may be proposed.

§17 Question 3, Article 7: Seventh just title, for the sake of allies and friends

A further title may arise whenever the barbarians themselves are engaged in legitimate war with one another, in which case the injured party has the right to wage war, and may call upon the Spaniards to help them, and then share the prizes of victory with them. This is what is said to have happened when the Tlaxcaltecs were fighting the Mexicans; they made a treaty with the Spaniards that they should help them to defeat the Mexicans, and promised them in return whatever they might win by the laws of war.⁸⁶ There can be no doubt that fighting on behalf of allies and friends is a just cause of war, as Cajetan declares (in *ST* II-II. 40. 1 §5); equally, a commonwealth may call upon foreigners to punish its enemies and fight external malefactors.⁸⁷ The confirmation of this is provided by the Romans, who extended their empire in just this way, by coming to the aid of their friends and allies and profiting from the opportunity to declare just wars, thereby taking possession of new provinces by the laws of war. The Roman empire is declared legitimate by St Augustine (*De ciuitate dei* V. 15–21) and by St Thomas (*De regimine principum* III. 4); Pope Sylvester I recognized Constantine the Great as emperor, just as Ambrose recognized Theodosius. Yet there seems to be no other title in law for the Romans' possession of the world

85. For this argument see *I On the Power of the Church* 5. 9 and the Glossary, s.v. *Alius*. Vitoria clearly rejects the common decretist view that the pope's role had been the determining factor in the deposition, insisting that it was the Franks who 'transferred the crown' (Muldoon 1968: 277).

86. Vitoria refers to Cortés' alliance with the independent Tlaxcaltecs against Montezuma's Aztec confederacy in 1519 (Cortés 1986: 58–72).

87. On coming to the aid of *socii* 'allies' as a justification for war (*Decretum* C.23. 3. 7 and d.p.c. 10; *ST* II-II. 188. 3 ad 1) see Barnes 1982: 778.

than the law of war, whose chief occasions were the defence and vengeance of their allies. In the same way, Abraham fought for the rights of the king of Salem and his other allies against the four kings of those lands, though he personally had received no wrong at their hands (Gen. 14).

This, then, is the seventh and last title by which the barbarians and their lands may or might have come into the possession and dominion (*dominium*) of the Spaniards.

§18 Question 3, [Article 8: An eighth possible title, the mental incapacity of the barbarians]

There is one further title which may be mentioned for the sake of the argument, though certainly not asserted with confidence; it may strike some as legitimate, though I myself do not dare either to affirm or condemn it out of hand. It is this: these barbarians, though not totally mad, as explained before (1. 6, p. 250), are nevertheless so close to being mad, that *they are unsuited to setting up or administering a commonwealth both legitimate and ordered in human and civil terms*. Hence they have neither appropriate laws nor magistrates fitted to the task. Indeed, they are unsuited even to governing their own households (*res familiaris*); hence their lack of letters, of arts and crafts (not merely liberal, but even mechanical), of systematic agriculture, of manufacture, and of many other things useful, or rather indispensable, for human use.⁸⁸ It might therefore be argued that for their own benefit the princes of Spain might take over their administration, and set up urban officers and governors on their behalf, or even give them new masters, so long as this could be proved to be in their interest.

As I have said, this argument would be persuasive if the barbarians were in fact all mad; in that case, it is beyond doubt that such a course would be *not merely lawful, but wholly appropriate*, and princes would be bound to take charge of them as if they were simply children. In this respect, there is scant difference between the barbarians and madmen; they are little or no more capable of governing themselves than

88. The list of 'arts' required for a civil society, and the reference to eating raw and 'uncivilized' food below, are based on the Aristotelian criteria for distinguishing civil from barbarian societies; the passage thus forms a counterpart to 1. 6 (see footnote 35 *ad loc.*). In returning to the question of natural slavery, Vitoria 'approached the subject from the other end, listing this time not what the Indians had in common with civilized men, but what they did not have' (Pagden 1981b: 80–1; see also Pagden 1986: 79–93).

madmen, or indeed than wild beasts. They feed on food no more civilized and little better than that of beasts. On these grounds, they might be handed over to wiser men to govern. And an apparent confirmation of this argument is if some mischance were to carry off all the adult barbarians, leaving alive only the children and adolescents enjoying to some degree the use of reason but still in the age of boyhood and puberty, it is clear that princes could certainly take them into their care and govern them for as long as they remained children. But if this is admitted, it seems impossible to deny that the same can be done with their barbarian parents, given the supposed stupidity which those who have lived among them report of them, and which they say is much greater than that of children and madmen among other nations. Such an argument could be supported by the requirements of charity, since the barbarians are our neighbours and we are obliged to take care of their goods.⁸⁹

But I say all this, as I have already made clear, merely for the sake of argument; and even then, with the limitation that only applies if everything is done *for the benefit and good of the barbarians, and not merely for the profit of the Spaniards*. But it is in this latter restriction that the whole pitfall to souls and salvation is found to lie.

In this connexion, what was said earlier about some men being natural slaves might be relevant (1. 1). All these barbarians appear to fall under this heading, and they might be governed partly as slaves.

Conclusion

THE CONCLUSION OF THIS WHOLE DISPUTE appears to be this: that if all these titles were inapplicable, that is to say if the barbarians gave no just cause for war and did not wish to have Spaniards as princes and so on, *the whole Indian expedition and trade would cease*, to the great loss of the Spaniards. And this in turn would mean a huge loss to the royal exchequer, which would be intolerable.

1. MY FIRST REPLY is that *trade would not have to cease*. As I have already explained, the barbarians have a surplus of many things which the Spaniards might exchange for things which they lack. Likewise, they have many possessions which they regard as uninhabited, which are open to anyone who wishes to occupy. Look at the Portuguese, who carry on

89. This claim was rejected by Melchor Cano (see the Introduction, p. xxvii) on the grounds that no precept of charity could involve coercion (Pagden 1987: 89).

a great and profitable trade with similar sorts of peoples without conquering them.

2. MY SECOND REPLY is that *royal revenues would not necessarily be diminished*. A tax might just as fairly be imposed on the gold and silver brought back from the barbarian lands, say of a fifth part of the value or more, according to the merchandise. This would be perfectly justifiable, since the sea passage was discovered by our prince, and our merchants would be protected by his writ.

3. MY THIRD REPLY is that it is clear that once a large number of barbarians have been converted, it would be neither expedient nor lawful for our prince to abandon altogether the administration of those territories.

ON THE LAW OF WAR

(De Indis Relectio Posterior, sive de iure belli)

As the first paragraph makes clear, Vitoria wrote this relection as the continuation of *On the American Indians*. The colophon of the scribe Juan de Heredia states that it was delivered a few months later, on the last day of the summer term, 19 June 1539. An interesting and possibly authentic variant reading in the first paragraph of L states that the relection was read in the schools 'at the same time as another relection' (see footnote 2 below). This detail seems too circumstantial for Boyer to have invented; if genuine, it provides a concrete reason, lacking from the anodyne version of the passage preserved in PS, for the relative brevity of *On the Law of War*.

As usual, P is the basis of this version; a selection of the numerous additions and changes in LS (many of which, to judge by the one recorded in footnote 28, were made after Vitoria's death) have been noted. The recent critical edition in the *Corpus Hispanorum de Pace* series (Vitoria 1981) provides full details of variants in these and other witnesses (notably V), as well as exceptionally full notes on sources, which are supplemented by Barbier's excellent doctrinal commentary in Vitoria 1966.

The division of the relection into two parts, of one and two questions respectively, follows Vitoria's own indications, in the *divisio* at the end of the Introduction and the paragraphs at the end of 4. 1 and 5. 5 respectively.

RELECTION OF THE LEARNED MASTER FRIAR
FRANCISCO DE VITORIA ON THE LAW OF WAR
DELIVERED BY HIM AT SALAMANCA, A.D. 1539¹

[Introduction]

Since it emerges finally, after the lengthy discussion in my first relection on the just and unjust titles of the Spanish claim to the barbarian lands of the so-called Indians, that possession and occupation of these lands is most defensible in terms of the laws of war, I have decided to round off the previous relection with a brief discussion of these laws. Since I shall be prevented by the strict time limit from dealing with every topic which might be discussed under this head,² I have not given my pen the freedom to rove as broadly and profoundly as the subject requires, but only so far as the short time at our disposal allows. I shall merely note here the most salient propositions on the topic, confining myself to the briefest proofs and ignoring many of the doubts which might arise in the course of a thorough discussion. I shall thus consider four problems:

1. Whether it is lawful for Christians to wage war at all
2. On whose authority war may be declared or waged
3. What may and ought to be the causes of the just war
4. What Christians may lawfully do against enemies, and to what extent.

These, then, will be the problems to be discussed in the first question.

§1 [Question 1, Article 1: Whether it is lawful for Christians to wage war]

PROCEEDING TO THE FIRST, it seems that *wars are altogether prohibited for Christians*:

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1. LS: 'Second Relection of the reverend Father Friar Francisco de Vitoria *On the Indians; or, On the right of the Spaniards to wage war against the barbarians.*' (On the title, see my introduction to *On the American Indians*, footnote 2).
 2. PS give this explanation, *quia temporis* (tempus P) *angustia compressi* (relections were governed by a time-limit of 2 hours). but L reads *quia haec disputatio etiam simul cum secunda relectione in scholis proponi oportuit*, 'since this discussion must be read in the schools at the same time as a second relection.

1. Christians are prohibited from defending themselves, according to the passage in Romans which says: 'Dearly beloved, defend not yourselves, but rather give place unto wrath' (Rom. 12: 19).³ And the Lord said in the Gospels, 'whosoever shall smite thee on thy right cheek, turn to him the other also'; and in the same passage, 'I say unto you, That ye resist not evil' (Matt. 5: 39). Elsewhere He says: 'they that take the sword shall perish with the sword' (Matt. 26: 52).⁴ It is not enough to reply that these words are not precepts, but advice. The objection against warfare would stand, even if wars undertaken by Christians were merely 'against the Lord's advice'.

BUT ON THE OTHER HAND the opinion of all the doctors and the accepted custom of the Church are against this conclusion, for they all show that wars are in many cases lawful. Of course, despite the agreement of all Catholics on this point, we find if we investigate the question that Martin Luther, who has left no nook untainted with his heresies, denies that Christians may lawfully take up arms, even against the Turks. He bases his view on the passages quoted above, and on the argument that if the Turks invade Christendom, this must be (as he puts it) 'the will of God', which it is not lawful to resist.⁵ But in this matter Luther has not been as successful in hoodwinking his fellow Germans – a nation suckled from infancy on war – as he has been with his other dogmatic opinions. On the other hand, even Tertullian does not seem to reject the argument against warfare out of hand; indeed, in his book *De corona* 11 he discusses whether soldiering is a fit occupation for a Christian, and finally seems to waver towards the opinion that fighting is unlawful for Christians, 'who,' he says, 'should not even fight cases in the courts'.

I REPLY, disregarding these peculiar aberrations, with a single proposition:

3. Vulg. reading; AV has 'avenge' for 'defend'.
4. The texts quoted by Vitoria in this article had been traditional in disputes on war since Gratian's discussion in *Decretum* C.23 (Brundage 1976: 106–9); these are taken from C.23. 1 d.a.c. 1. Vitoria had rehearsed the same arguments in his 1535–6 lectures on Aquinas' discussion of the just war, *In ST II-II*. 40. 1 (Vitoria 1932–52: II. 279–88; English translation in Scott 1934, Appendix F).
5. Martin Luther, *Resolutiones disputationis de virtute indulgentiarum* (1518). As Barbier points out (Vitoria 1966: 111 n.), this Lutheran proposition had been explicitly condemned by Pope Leo X in the bull *Exsurge Domine* (15 June 1520, in Denzinger 1911: 259, §774). Vitoria had already developed his objections to the pacifism of the Protestant reformers in his lectures *In ST II-II*. 40. 1 (Scott 1934, Appendix F: cxvi).

1. *A Christian may lawfully fight and wage war.* This conclusion is proved by Augustine in several places; he eloquently sets out the arguments in its favour in his *Contra Faustum* 22. 74–5, *Quaestiones in Heptateuchum* 6. 10 (on Josh. 8: 2), *De ciuitate dei* XIX. 12, *Contra Faustum* 22. 70, *Ep.* 138. 15 to Marcellinus, and *Ep.* 189. 6 to Boniface.⁶ According to Augustine the proof is furnished by the words of John the Baptist to the soldiers: ‘Do violence to no man, neither accuse any falsely’ (Luke 3: 14). Augustine comments (*Ep.* 138. 15 = *Decretum* C.23. 1. 2):

If Christian discipline were to condemn war altogether, surely the advice given in the Gospel to the men seeking salvation would have been to throw away their arms and avoid military service altogether. Yet what was said to them was: ‘Do violence to no man, and be content with your wages.’

A second proof, this time by reason, is provided by Aquinas (*ST* II-II. 40. 1). According to the passage in Romans, ‘for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil’ (Rom. 13: 4), it is lawful to draw the sword and use weapons against malefactors and seditious subjects within the commonwealth; therefore it must be lawful to use the sword and take up arms against foreign enemies too. So princes are told in the psalm: ‘Deliver the poor and needy: rid them out of the hand of the wicked’ (Ps. 82: 4).

Third, war was permitted under the natural law, as shown by Abraham, who fought against the four kings (Gen. 14: 14–16); it was also permitted in Mosaic law, as the cases of David and the Maccabees show. But the law of the Gospels does not prohibit anything which is permitted by natural law, which is why it is called the ‘law of liberty’ (Jas. 1: 25; 2: 12), as Aquinas elegantly shows (*ST* I-II. 108. 1 ad 2; cf. *On Civil Power* 1. 5 ad 6). Therefore anything which is permitted in natural and Mosaic law is by that token permitted in evangelical law. And there can be no doubt about the rights of defensive war, since ‘it is lawful to resist force with force’ (*Vim ui repellere licet*, *Digest* I. 1. 3, and X. 5. 12. 18).

Fourth, the same proof holds true also for offensive war; that is to say, not only war in which property is defended or reclaimed, but also

6. This handful of influential texts by Augustine were the basis of medieval theories of the just war (Barnes 1982: 771; Brundage 1976: 102). Here and throughout, Vitoria cites them from Gratian's *Decretum* C.23, using the incorrect titles *Contra Manichaeos* (= *Contra Faustum* 22. 74–9), *Liber 83 quaestionum* (= *QQ. in Heptateuchum*), *De uerbis domini* (= *De ciu. dei* XIX. 12), and *De puero centurionis* (= *Ep.* 138).

war in which vengeance for an injury is sought. This is proved by the authority of Augustine contained in the canon *Dominus Deus noster* (*Decretum* C.23. 2. 2): 'The usual definition of just wars is that they are those which avenge injustices (*iniurias*) in cases where a nation or city is to be scourged for having failed to punish the wrongdoings of its own citizens, or restore property which has been unjustly stolen' (*Quaest. in Heptateuch.* 6. 10).⁷

Fifth, a further proof concerning offensive war is that even defensive war could not conveniently be waged unless there were also vengeance inflicted on the enemy for the injury they have done, or tried to do. Otherwise, without the fear of punishment to deter them from injustice, the enemy would simply grow more bold about invading a second time.

The sixth proof is that the purpose of war is the peace and security of the commonwealth [as Augustine says in *De ciuitate dei* XIX. 12, and in his *Ep.* 189. 6 to Boniface. But there can be no security for the commonwealth]⁸ unless its enemies are prevented from injustice by fear of war. It would be altogether unfair if war could only be waged by a commonwealth to repel unjust invaders from its borders, and never to carry the conflict into the enemies' camp.

A seventh proof is based on the purpose and good of the whole world. Surely it would be impossible for the world to be happy – indeed, it would be the worst of all possible worlds – if tyrants and thieves and robbers were able to injure and oppress the good and the innocent without punishment, whereas the innocent were not allowed to teach the guilty a lesson in return.

The last proof is the authority and example of saints and good men, always the strongest argument in any moral question. Many of them have not only protected their homes and property with defensive war, but also punished the injuries committed or even planned against them by their enemies with offensive war. Take, for example, the case of Jonathan and Simon, who avenged the murder of their brother John on the children of Jambri (1 Macc. 9: 32–42). In the Christian Church the same is true of Constantine the Great, Theodosius the Great, and many other distinguished Christian emperors who waged countless wars of both kinds, though they had saintly and learned bishops as their advisers.

The conclusion, then, is beyond doubt.⁹

7. This crucial passage was quoted incorrectly by Aquinas, and 'badly garbled' by Gratian (Barnes 1982: 778, n.37). Vitoria's mistaken readings derive from the former, not the latter; they have been retained in the translation.

8. This phrase is omitted by *P* by haplography.

9. This sentence is omitted by *LS*.

§2 Question 1, Article 2: On whose authority may war be declared or waged?

PROCEEDING TO THE SECOND, we may answer with these propositions:

§3 1. Any person, even a private citizen, may declare and wage defensive war. This is clear from the principle 'force may be resisted by force' quoted above from the *Digest*. From this we may gather that any person may wage war without any other person's authority, not only for self-defence but also for the defence of their property and goods.

§4 But this proposition raises a first doubt: whether one may retaliate against an attack by a robber or enemy when it is possible to evade the attack by running away?¹⁰ St Antonino of Florence replies that one may not, since this would no longer be a defensive action of the necessary 'irreproachable moderation'.¹¹ A man is required to defend himself with the minimum possible harm to his attacker; therefore, if by resisting he will be forced either to kill or gravely wound his attacker, it seems that he is required to take any possible opportunity of escape by running away. But Nicolaus de Tudeschis, in his commentary on the decretal *Olim causam quae* (X. 2. 13. 12 §17), makes a distinction: if the victim of the attack would incur great dishonour by flight, he is not required to run away and may repel the attack by retaliating in kind; but if he stands to lose none of his fame or honour (as is the case with a monk or peasant attacked by a powerful nobleman, for example), then he had better run away. Bartolus of Sassoferrato, on the other hand, holds that one may lawfully defend oneself in any circumstances without running away, since 'to run away is itself an injury' (in *Digest* XLVIII. 8. 9 and 19. 1; XLVII. 10. 15). Yet, if it is lawful to make armed resistance for the defence of property, as admitted in the decretal *Olim causam quae* (X. 2. 13. 12) adduced by Nicolaus de Tudeschis above, and also in *Dilecto* (Sext 5. 11. 6), then it must be all the more justifiable in the defence of

10. The distinction between public enemies (*hostes*) and brigands or robbers (*latrunculi uel praedones*), important in Roman and canonist discussions of *Vim ui* (Brundage 1976: 113), is ignored by Vitoria, who blurs the lines between public and private self-defence. Aquinas denied that war could be declared by a private person, 'since he can prosecute his rights in the court of a superior' (ST II-II. 40. 1; Barnes 1982: 775-6); Vitoria further diverges from the theologians' line in going on to cite the jurists' view that anyone, even a private person, can declare war in self-defence (see also his lectures *In ST II-II. 40. 1*, in Scott 1934, Appendix F: cxi-ii).

11. St Antonino, ST II. 7. 8, defines legitimate self-protection as that carried out 'with the moderation of an irreproachable defence' (*moderamen inculpatae tutelae*). This was the standard definition of 'proportionality' or 'minimal force' in canon law (X. 5. 12. 18) and in treatises such as those of John of Legnano and Johannes Teutonicus (Barnes 1982: 780).

the person, since 'personal injury is worse than loss of property' (*Digest* XLVIII. 19. 10). This opinion seems convincing and safe enough, especially as it is supported by civil law (as in *Digest* XLVIII. 8. 9); no one can sin by following the authority of the law, for laws justify in the forum of conscience. Hence, even if natural law did not permit us to kill in defence of our property, civil law appears to have made it permissible. And this, I may say, holds true not only for the laity, but also for the clergy and the religious, so long as there is no hint of provocation.

§5 2. SECOND, *any commonwealth has the authority to declare and wage war*.¹² For the proof of this proposition, it is to be noted that the difference in this respect between a private person and the commonwealth is that the private person has, as I have said, the right to defend himself and his property, but does not have the right to avenge injury, nor even, indeed, to seize back property which has been taken from him in the past. Self-defence must be a response to immediate danger, made in the heat of the moment or *incontinenti* as the lawyers say.¹³ Once the immediate necessity of defence has passed, there is no longer any licence for war. In my opinion, however, a man who has been unjustly struck may strike back immediately, even if the attack would probably have gone no further. For example, to avoid disgrace and humiliation a man who has been struck in the face with the fist may immediately retaliate with his sword, not to avenge himself but (as explained above) to escape dishonour and loss of face. The commonwealth, on the other hand, has the authority not only to defend itself, but also to avenge and punish injuries done to itself and its members. This is proved by Aristotle's dictum that 'the commonwealth should be self-sufficient (*sibi sufficiens*)' (*Politics* 1280^b33–5); the commonwealth cannot sufficiently guard the public good and its own stability unless it is able to avenge injuries and teach its enemies a lesson, since wrongdoers become bolder and readier to attack when they can do so without fear of punishment.¹⁴ So it is necessary for the proper administration of human affairs that this authority should be granted to the commonwealth.

12. P notes in the margin: 'All this from Cajetan on St Thomas II-II, 40.'

13. Vitoria follows closely the position of the canonists, and in particular of Innocent IV's commentary on *Olim causam quae* (*Ad X.* 2. 13. 12), where it is stated that self-defence made *incontinenti*, 'that is before turning to any other business', does not need the authority of a prince, even for the clergy (Brundage 1976: 130, n.76).

14. The mainstream medieval theorists of the just war all agreed on the importance of authority (*Decretum* C.23. 1. 2), conceiving such authority to be that of a sovereign 'recognizing no superior' (since such a prince has no other recourse for obtaining justice). Vitoria, however, 'derived authority not from sovereignty, but from the Aristotelian principle that a republic must be self-sufficient' (Barnes 1982: 775–7).

§6 3. THIRD, in this matter the prince has the same authority as the commonwealth. This proposition is expressly expressed in Augustine's dictum: 'The natural order, being concerned with peace, requires that the authority and decision to undertake war be in the hands of princes' (*Contra Faustum* 22 75). And it is proved by the following argument: the prince must be chosen by the commonwealth, therefore he is the authorized representative of the commonwealth. Indeed, where the commonwealth has a legitimate prince, all authority rests in his hands, and no public action can be taken, whether in peace or in war, without him.

§7 But the nub of the problem is to define the commonwealth, and say who is properly its prince. The short answer is that the commonwealth is, properly speaking, a perfect community (*perfecta communitas*); but this too needs clarification. What is a 'perfect' community? Let us begin by noting that a 'perfect' thing is one in which nothing is lacking, just as an 'imperfect' thing is one in which something is lacking: 'perfect' means, then, 'complete in itself' (*quod totum est, perfectum quid*). A perfect community or commonwealth is therefore one which is complete in itself; that is, one which is not part of another commonwealth, but has its own laws, its own independent policy, and its own magistrates. Such commonwealths are the kingdom of Castile and Aragon, and others of the same kind.¹⁵ It does not matter if various independent kingdoms and commonwealths are subject to a single prince; such commonwealths, or their princes, have the authority to declare war.¹⁶

§8 But it may fairly be asked whether, if several such commonwealths or princes share a single prince, they can of themselves wage war without the authority of their supreme sovereign? I reply that they undoubtedly can. Thus kings who are subject to the emperor can wage war on each other without waiting for the emperor's leave, since (as I said above) a commonwealth must be self-sufficient, which it cannot be without this ability.

§9 But it clearly follows from the preceding argument that princelings who are not sovereigns of independent commonwealths, but simply

15. *LS* add 'the Venetian signory' (*principatus Venetorum*) after 'Aragon'. This obscures the point which Vitoria is making, which is that kingdoms which are part of the same crown (as Castile and Aragon were both parts of the Spanish crown) can still be 'perfect' independent commonwealths (for this Aristotelian definition of *perfecta*, compare *On Civil Power* 1 2, footnote 18). In his lectures *In ST II-II*, 40. 1, Vitoria used the example of the Duke of Milan, 'who may declare war if need be, because even though he is subject to the emperor, the duchy of Milan is nevertheless perfect and does not share its being with any other commonwealth' (Scott 1934, Appendix F: civii).

16. 'and only such' add. *LS*.

rulers of parts of a greater commonwealth, cannot declare or wage war. For example, the lands of the Duke of Alba or the Count of Benavente are parts of the kingdom of Castile, not independent commonwealths.

Despite all this, however, it must be admitted that for the most part these matters are done according to the law of nations or human law; and therefore, custom may establish the right and authority to wage war. If any city or prince has obtained the customary right to wage war on their own account, then this right may not be contested, even if in other respects the commonwealth is not independent.¹⁷

Furthermore, this licence and authority to wage war may be conferred by necessity. If, for example, one city attacks another in the same kingdom, or if a duke attacks another duke, and if the king fails, through negligence or timidity, to avenge the damage done,¹⁸ then the injured party, city or duke, may not only defend itself, but may also carry the war into its attacker's territory and teach its enemies a lesson, even killing the wrongdoers. Otherwise the injured party would have no adequate self-defence; enemies would not abstain from harming others, if their victims were content only to defend themselves. By the same argument, even a private individual may attack his enemy if there is no other way open to him of defending himself from harm.

This will suffice for the discussion of this article.

§10 Question 1, Article 3: What are the permissible reasons and causes of just war?

PROCEEDING TO THE THIRD, which brings us closer to the subject of our barbarians, we may reply with the following propositions:

1. FIRST, *difference of religion cannot be a cause of just war*. This proposition was amply proved in the previous relection, where I refuted the fourth title offered to justify the enslavement of the barbarians, namely 'that they refuse to receive the Christian faith' (*On the American*

17. Vitoria's argument here derives from Cajetan's commentary on *ST* II-II, 40, 1 §3, who also adduces the authority of 'custom'. The argument was accepted by most of Vitoria's followers until Suárez (*De bello* 2, 2) challenged it by introducing a distinction between wars fought by the subjects of different princes, which were legitimate, and those fought by subjects of the same prince as in Vitoria's present case, which were not (Pereña 1954: II, 95-6).

18. On this extension of 'authority' through the impotence or indolence of sovereigns, see Barnes 1982: 777. Suárez drew the inevitable conclusion, that authority is in practice needed only for aggressive wars, not defensive (*De bello* 2, 1-2).

Indians 2. 4). This is the opinion of St Thomas (*ST* II-II. 66. 8 ad 2) and of all the other doctors; I know of no one who thinks the contrary.

§11 2. SECOND, *enlargement of empire cannot be a cause of just war*. This proposition is too well known to require further proof. If it were not so, both parties in a war would have equally just cause to fight, and both would be innocent; from this it would follow that it was unlawful for either side to kill the other; and this would be self-contradictory, for it would mean that the war was just, but the killing was unjust.

§12 3. THIRD, *the personal glory or convenience of the prince is not a cause of just war*. This proposition is also well established. The prince must order war and peace for the common good of the commonwealth; he may not appropriate public revenues for his own aggrandisement or convenience, still less expose his subjects to danger. This is the difference between a legitimate king and a tyrant: the tyrant orders the government for his own profit and convenience, whereas the king orders it for the common good, as Aristotle demonstrates (*Politics* 1295^a19–21). The prince has his authority from the commonwealth, and must therefore exercise it for the good of the commonwealth; and laws must not be framed for the convenience of any private individual, but for the common utility of the members of the commonwealth, as stated in the canon *Erit autem lex* (*Decretum* D.4. 2), citing St Isidore (*Etymologies* V. 1. 21). Therefore the laws of war ought to be for the common utility, not for the utility of the prince. This is the difference between free men and slaves, as Aristotle shows in *Politics* 1253^b15–1255^b40. Masters use their slaves for their own convenience, without consideration of the slaves' convenience; free men, on the other hand, do not live for the convenience of others, but for themselves. For a prince to abuse his position by forcing his subjects into military service and by imposing taxes on them for the conduct of wars waged for his convenience rather than the public good, is therefore to make his subjects slaves.

§13 4. FOURTH, *the sole and only just cause for waging war is when harm has been inflicted*. This is first proved by the authority of Augustine: 'The usual definition of just wars, etc.' (*Quaest. in Heptateuch.* 6. 10). It is also the conclusion of St Thomas (*ST* II-II. 40. 1) and all the doctors. Similarly, offensive war is for the avenging of injuries and the admonishment of enemies, as we have seen; but there can be no vengeance where there has not first been a culpable offence; *ergo*, etc. Likewise, a prince cannot have greater authority over foreigners than he has over his own subjects; but he may not draw the sword against his own subjects unless they have done some wrong; therefore he cannot do so against foreigners except in the same circumstances. The confirmation of this is the passage about the prince in the epistle of Paul to the Romans, cited

above: 'For he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil' (Rom. 13: 4). It follows from this that we may not use the sword against those who have not harmed us; to kill the innocent is prohibited by natural law. For the moment I postpone the question of whether God made any other special teachings in this matter; He is the lord of life and death, and may dispose differently if He sees fit.

§14 5. FIFTH, *not every or any injury gives sufficient grounds for waging war.* The proof of this proposition is that it is not lawful to inflict cruel punishments such as death, exile, or confiscation of goods for all crimes indiscriminately, even on our own common people and native subjects of the realm. Therefore, since all the effects of war are cruel and horrible – slaughter, fire, devastation – it is not lawful to persecute those responsible for trivial offences by waging war upon them. The wicked man 'shall be beaten according to his fault, by a certain number' (Deut. 25: 2).

Therefore it is not lawful to start war for every reason or injury. And this is sufficient for this article.

§15 Question 1, Article 4: *what, and how much, may be done in the just war?*

PROCEEDING TO THE FOURTH, let us make the following propositions:

1. FIRST, *in the just war one may do everything necessary for the defence of the public good.* This is obvious, since the defence and preservation of the commonwealth is the purpose of war. We have proved that this is lawful in the case of a private individual in his own defence, and therefore it must be all the more so in the case of a commonwealth or its prince.

§16 2. SECOND, *in the just war it is also lawful to reclaim all losses, or their precise value.* This is too well known to need proof. This is the reason for undertaking war in the first place.

§17 3. THIRD, *it is lawful to seize the goods of the enemy as indemnity for the costs of war, and for all losses unjustly caused by the enemy.* This is clear, since enemies who have caused injury are bound to make such restitution, and princes may accept and sue for all such things in war. If there was a legitimate arbiter to judge between the two parties to a war, he would have to condemn the unjust aggressor and perpetrator of the damage not only to the restitution of all goods stolen, but also to making good the costs and losses incurred by the war. But a prince who wages a just war acts the part of the judge in the contention which is the cause of war, as I shall shortly show, and therefore he too may demand all these

things from his enemy. As I said before, if a private individual when he has no other redress is permitted to seize what he is owed from his debtor, then a prince may do so too.

§18 4. FOURTH, *a prince may do everything in a just war which is necessary to secure peace and security from attack*, for instance pulling down fortresses and all other such actions of this kind.¹⁹ The proof of this is that, as I have said above, the purpose of war is peace, and therefore those who wage just war may do everything necessary for security and peace. Tranquillity and peace are counted among the good things which men strive for; without security, all the other good things together cannot make for happiness. When enemies upset the tranquillity of the commonwealth, therefore, it is lawful to take vengeance upon them.²⁰

§19 5. FIFTH, this is not all that is allowed in the just war, but even after the victory has been won and property restored to its rightful owners, and peace and security are established, *it is lawful to avenge the injury done by the enemy, and to teach the enemy a lesson by punishing them for the damage they have done.*²¹ For the proof of this point it should be noted that the prince has the authority not only over his own people but also over foreigners to force them to abstain from harming others; this is his right by the law of nations and the authority of the whole world. Indeed, it seems he has this right by natural law: the world could not exist unless some men had the power and authority to deter the wicked by force from doing harm to the good and the innocent. Yet those things which are necessary for the governance and conservation of the world belong to natural law. What other argument than this can we use to prove that the commonwealth has the authority in natural law to punish those of its own members who are intent on harming it with execution or other penalties? If the commonwealth has these powers

19. LS read: 'And these are not the only things a prince may lawfully do in a just war; he may go further, that is as far as necessary to secure peace and safety from the enemy, say by demolishing the enemy's castles or setting up garrisons in his territory, if that is necessary to secure himself from attack.'

20. LS add 'by convenient means' at the end of this sentence, and then continue: 'Likewise against internal enemies, that is bad members of the commonwealth, it is lawful to do all these things, and therefore it is lawful against external enemies. The antecedent premiss is clear: if any member of the commonwealth harms another, the magistrate does not only compel the perpetrator of the crime to make reparation to the injured party, but also, if he still poses a threat to the victim, forces the aggressor to give surety, or exiles him from the city to prevent any further danger from that quarter. From this it is clear that once victory has been won and goods restored it is lawful to demand from our enemies hostages, ships, arms and the other things which are necessary to keep the enemy to the terms of peace without fraud or deception, and to avoid any further danger from them.'

21. P has the marginal note 'Thus Cajetan' against this sentence.

against its own members, there can be no doubt that the whole world has the same powers against any harmful and evil men. And these powers can only exist if exercised through the princes of commonwealths. Therefore it is certain that princes have the power to punish enemies who have done harm to the commonwealth; and even after the war has been duly and justly carried to its conclusion, these enemies remain as hateful to the prince as they would be to a proper judge. This is proved and confirmed by the authority of the best men. As demonstrated above in the case of the Maccabees (1. 1, proof 6), those who wage war do not do so only to recover their losses but also to avenge injury; and this has also been the practice of most Christian kings. The simple rout of the enemy is not enough to cancel out the shame and dishonour incurred by the commonwealth; this must be done by the imposition of severe penalties and punishments. Amongst other things, a prince is required to defend and preserve the honour and authority of the commonwealth.²²

[Question 2: Doubts concerning the justice and conduct of war]

NOW FROM EVERYTHING THAT HAS BEEN SAID ABOVE there arise a number of doubts.²³ The first concerns the article on 'the reasons and causes of just war' (1. 3):

[Question 2,] Article 1: Whether it is enough for the just war that the prince should believe that his cause is just

PROCEEDING TO THE FIRST, let us make the following propositions:

§20

1. FIRST, *this is not always enough*. The first proof is that in lesser cases it is not enough, either for the prince or for private subjects, to believe that they are acting justly, as is well known. It is possible that they act in vincible error, or under the influence of some passion. Any man's opinion is not sufficient to make an action good; it must be an opinion formed according to the judgment of a wise man, as is clear

22. This claim derives from Cajetan's *Summula*, s.v. bellum §6, which restricted the prince's authority to outsiders who had given legitimate cause for offence (*perturbatores reipublicae extrinsecos*). The argument was further developed by Vitoria's successors, notably Suárez, *De bello* 4. 7 (Pereña 1954: II. 136).

23. 'Ex omnibus supradictis': the *dubia* discussed by Vitoria in the remainder of the relection in fact concern only the points raised in Articles 3 and 4 of Question 1. The first five *dubia*, which relate to 1. 3, are arranged as Question 2, and the remaining nine, which relate to 1. 4, as Question 3.

from Aristotle's *Nicomachean Ethics* (1106^b36-1107^a2; cf. *On the American Indians* 1. 1). Furthermore, it would otherwise follow that most wars would be just on both sides. It does not usually happen that princes wage war in bad faith; for the most part they believe that their cause is just. In these circumstances, then, all the belligerents would be innocent, and consequently it would not be lawful for either side to kill anyone on the other. Even the wars of Turks and Saracens against Christians would be justified, since these peoples believe that they are serving God by waging them.

- §21 2. SECOND, *for the just war it is necessary to examine the justice and causes of war with great care, and also to listen to the arguments of the opponents, if they are prepared to negotiate genuinely and fairly.* As Terence says, 'in every endeavour the seemly course for the wise man is to try persuasion before turning to force' (*Eunuchus* 789). One must consult reliable and wise men who can speak with freedom and without anger or hate or greed. This is obvious.²⁴

[Question 2, Article 2: Whether subjects are required to examine the causes of war]

- §22 THE SECOND DOUBT is this: *whether subjects are required to examine the cause of war, or whether they may go to war without any inquiry on this matter, as officers of the law may carry out the commands of a judge without questioning his orders.*²⁵

IN REPLY let us make the following propositions:

1. FIRST, *if the war seems patently unjust to the subject, he must not fight, even if he is ordered to do so by the prince.* This is obvious, since one may not lawfully kill an innocent man on any authority, and in the case we are speaking of the enemy must be innocent. Therefore it is unlawful to kill them. In this case the prince commits a sin in declaring war; but 'they which commit such things [as] are worthy of death, not only do the same, but have pleasure in them that do them' (Rom. 1: 32). So even soldiers, if they fight in bad faith, are not excused. Furthermore, one may not kill innocent members of the commonwealth at the prince's behest, and therefore one may not kill foreigners either.

24. LS add: 'For in moral matters it is difficult to hit on the true and just course of action; if one proceeds without due caution, one can easily go astray. And a mistake of this kind cannot be used as an excuse, when the affair is of such importance as to concern the safety and destruction of many people, people who are after all our own neighbours, whom we are supposed to love as ourselves.'

25. On Vitoria's probabilism see *On the American Indians* intro., footnote 8.

§23 And from this flows the corollary that if their conscience tells subjects that the war is unjust, *they must not go to war even if their conscience is wrong*, for 'whatsoever is not of faith is sin' (Rom. 14: 23).

§24 2. SECOND, all senators and territorial magnates, and in general *all those who are admitted or called or of their own accord attend the public or royal council are in duty bound to examine the cause of just war*. This is obvious, because any person who has the power to prevent his neighbours' danger or loss is obliged to do so, especially when it is a question of danger of death and greater evils, as it is in war. If such men can by examining the causes of hostility with their advice and authority avert a war which is perhaps unjust, then they are obliged to do so. If an unjust war is started because they neglect to do this, then they are taken to have given their consent to it; if a man can prevent something which he ought to prevent, but fails to do so, then the blame rests with him. Besides, the king is not capable of examining the causes of war on his own, and it is likely that he may make mistakes, or rather that he *will* make mistakes, to the detriment and ruin of the many. So war should not be declared on the sole dictates of the prince, nor even on the opinion of the few, but on the opinion of the many, and of the wise and reliable.

§25 3. THIRD, *lesser subjects who are not invited to be heard in the councils of the prince nor in public council are not required to examine the causes of war, but may lawfully go to war trusting the judgment of their superiors*. This is proved, in the first place, because it would be impossible, and inexpedient, to put the arguments about difficult public business before every member of the common people. Second, men of lower condition and class cannot prevent war even if they consider it to be unjust, since their opinion would not be heard; it would therefore be a waste of time for them to examine the causes of war.²⁶

§26 4. FOURTH, *there may nevertheless be arguments and proofs of the injustice of war so powerful, that even citizens and subjects of the lower class may not use ignorance as an excuse for serving as soldiers*. It is clear, for example, that such ignorance may be wilful and wicked, deliberately fostered out of hostility. Besides, if it were not so even the infidels would be justified in following their princes to war, and it would not be lawful for Christians to make reprisals against them, for it is certain that they believe they have just cause in their wars. Furthermore, the soldiers who crucified Christ could have used this excuse of ignorance since

26. LS add a further sentence: 'Third, for this class of men it should be sufficient justification of war, in the absence of any contrary argument, that it is waged by the authority of the public council; therefore they need examine no further.'

they were following the orders of Pilate; and so might the Jews, who followed their leaders in shouting 'Away with him, away with him, crucify him' (John 19: 15). None of these excuses can be accepted; *ergo*, etc.

§27 [Question 2, Article 3: What is to be done when the justice of war is undecided?]

THE THIRD DOUBT is *what is to be done when the justice of a war is debatable*, when both parties seem to have convincing reasons on their side?

IN REPLY let us make the following propositions, beginning with the arguments which concern princes:

1. FIRST, *if one has a legitimate possession, even though some particular doubt remains over his title, another prince may not seek to take it away by force of arms*. For example, if the king of France is in legitimate possession of Burgundy, even though his right to it may be doubtful it does not seem that our²⁷ Emperor may seize Burgundy by force; on the other hand, the king of France ought not to try to seize it.²⁸ This is proved by the legal maxim that in cases of doubt possession is nine parts of the law. It is not lawful to rob a man of his property simply on the grounds that one disputes his right to possess it. If the case were to be tried before a duly constituted judge, he would never dispossess the man of his property while the case remained unresolved; therefore, since the prince who seeks justice is himself the judge in the case, he cannot lawfully plunder the possessor as long as some doubt about the title²⁹

27. LS omit the word 'our'. At the time of the relection's delivery in 1539, the emperor was Charles V, I of Spain. The removal of the possessive adjective points to a revision made because of Charles' abdication (16 January 1556), a few months before the completion of Boyer's copy-editing (31 July); compare *On the American Indians* 2. 1, footnote 44.

28. LS substitute: 'to seize Milan or Naples on the grounds that it is not certain to whom they belong in law'. The printed witnesses insert a further reference to the Milanese dispute at the end of 2. 5 (see footnote 35 below). Barbier sees the interpolation as expressing Vitoria's support for the balance of power achieved by the Treaty of Cambrai (3 August 1529) between Charles V and François I of France, which restored Burgundy to the crown of France (lost by the Treaty of Madrid after the battle of Pavia, 1525), while ceding Milan to Charles (Vitoria 1966: 131 n.). This could hardly be correct even if the words were authentic, however, since Franco-Spanish hostilities over Milan had broken out again three years before the delivery of the relection, in 1536. At that time, in answer to a question from the Constable of Castile, Vitoria took the line that both sides were behaving intransigently (see Appendix A, pp. 337-8).

29. *de iure om. P.*

remains. Another argument is that, if it is never lawful to dispossess the legal owner in an unresolved civil or private case, then it cannot be lawful in the disputes of princes, since the laws are the prince's laws. If according to human laws it is not permissible to dispossess a legitimate owner in an unresolved case, then such action may justly be objected to in the case of princes.³⁰ Besides, if this principle were not observed, both sides in a war would be just and the war could never be settled.³¹

§28 2. SECOND, *if a city or province of doubtful title has no legitimate owner* (for instance, if it is left unclaimed by the death of the legitimate owner, and it cannot be established whether the heir is the king of Spain or the king of France), *in law it is apparent that if one of the two claimants is willing to negotiate a division of the territory or compensation for part of it, then the other prince must accept the negotiation, even when he is stronger and has the power to take the whole territory by force of arms.* He would not in this case have just cause for war, as is proved by the fact that the other prince could not be said to be doing him any unjust harm by asking for an equal share in a case where he has an equal claim. In private cases, even disputed ones, it is not lawful for one of the parties to preempt the whole of the disputed property; therefore it cannot be lawful in the disputes of princes either. Finally, in this case too, the war would be just on both sides; the just judge would not give the whole territory to one or the other side, but would divide it between them.

§29 3. THIRD, even when a prince enjoys peaceful possession, *if he is in doubt about his rightful title he must carefully examine the case and listen peacefully to the reasons of the other side, to see if a clear decision can be reached in favour of himself or the other party.* The proof of this proposition is that if, despite his doubts, he neglected to find out the truth, he would no longer possess the territory in good faith. In matrimonial cases, even a man who has legitimate conjugal rights must unquestionably take steps to verify the matter if he begins to suspect that his wife is married to another man; therefore the same reason must hold true of other cases. Princes are the only judges in their own affairs, since they have no superiors; but it is clear that if anyone raises an objection to

30. LS insert a quotation from X. 1. 2. 6: 'Submit to the laws which you yourself have promulgated, for any man who makes laws for others ought to be bound by the same laws himself.' The first phrase is an apophthegm attributed to the Greek lawgiver Pittacus, also cited by Aquinas in *ST* I-II. 96. 5 ad 3.

31. LS add: 'For if it were lawful for one party to seize territory by force of arms in an unresolved case, then it would likewise be lawful for the other to defend itself; once the first had repossessed the land, the other would have the right to claim it back again, and there would be no end to the ensuing wars, to the damage and destruction of the two peoples.'

another's just title to his property, the judge is bound to examine the case, and therefore princes are similarly bound to examine their own title in cases of doubt.

§30 4. FOURTH, *once the case has been examined as long as is reasonable, if the doubt remains unresolved, the legitimate owner is not required to relinquish his territory, but may henceforth own it lawfully.* This is obvious, first of all because a judge is not required in these circumstances to dispossess him of his property, so he himself cannot be required to relinquish it, either wholly or in part. In the matrimonial case above, for example, the husband is not required to give up his conjugal rights if the doubt remains unresolved after due examination, as stated in the decretals *Inquisitioni tuae respondentes* (X. 5. 39. 44) and *Dominus* (X. 4. 21. 2). The same must therefore hold in other cases. Pope Hadrian VI expressly states in his *Quodlibets* 2 that one may lawfully retain possession when in doubt.

So much, then, for the propositions concerning princes in an unresolved dispute. But what of their subjects, when in doubt about the justice of war? Hadrian himself in the same passage (*Quodlibets* 2 ad 1) says that a subject who is in doubt about the justice of war may not lawfully go to war at the command of his superior.³² He proves this assertion by arguing that the subject who does go to war in these circumstances is not acting in good faith, and therefore runs the danger of incurring mortal sin.³³ The same opinion is formulated by Silvestro Mazzolini da Priero in his *Summa Sylvestrina*, s.v. bellum 1 §9.

BUT AGAINST THIS let us make the following proposition:

§31 5. FIFTH, *in the first place, there is no doubt that in defensive wars subjects are not merely permitted to follow their prince into battle even where the justice of the case is in doubt, but are indeed bound to do so; and in the second place, that the same is true also of offensive wars.* The first proof of this is that, as has been said already, a prince neither can nor ought always to explain the reasons for war to his subjects; if subjects were unable to fight until they understood the justice of the war, the safety of the commonwealth would be gravely endangered. Second, in cases of doubt the safer course should be followed; but if subjects fail to

32. LS add after 'justice of war': 'that is, whether the cause alleged is sufficient, or simply whether there is sufficient cause for declaring war'.

33. LS offer a somewhat garbled text, followed by an addition: 'Likewise whatsoever is not of faith is sin (Rom. 14: 23), according to the doctors, is not only to be interpreted as referring to things against certain conscience, but also against one's opinion of conscience, and even against doubtful conscience.'

obey their prince in war from scruples of doubt, they run the risk of betraying the commonwealth into the hands of the enemy, which is much worse than fighting the enemy, doubts notwithstanding; therefore they had better fight. Another clear proof is that an officer of the law must carry out the sentence of a judge even if he doubts its justice; to argue the contrary would be extremely dangerous. Augustine says bluntly in his *Contra Faustum* 22. 75: 'If ordered to do so, a just man may righteously go to war, even under a sacrilegious king, so long as he is either certain the order is not against God's precept, or uncertain whether it is' (*Decretum* C.23. 1. 4). There you have it: Augustine said plainly that when it is uncertain (that is, unresolved) whether the war is against God's precept, the subject may lawfully fight. Even Hadrian could not get round this quotation from Augustine; twist and turn as he may, my conclusion is undoubtedly Augustine's. It is no reply to say that such a man is required to rid himself of his doubts and persuade himself in conscience of the justice of the war, since it is clear, morally speaking, that he cannot do so, as in other cases of doubt.

Hadrian's mistake seems to lie in his assumption that, if I am in doubt whether the prince's war is just or whether the cause of a particular war is just, it follows immediately that I must doubt whether or not I may lawfully fight. I admit that it is never lawful to act against a conscientious doubt, so that if I am in doubt whether I should act or not it is a sin to act. But it is incorrect to deduce that if I am in doubt as to whether the cause of war is just, I must therefore doubt whether I may lawfully make war, or fight in that war. In fact, we must deduce just the opposite: if I am in doubt about the justice of war, it follows that it is lawful for me to go to war at the command of my prince. In the same way, if an officer of the law is in doubt whether the judge's sentence is just, it is quite invalid to conclude that he must doubt whether he may lawfully carry out that sentence; on the contrary, indeed, he knows very well that he is required to carry out the sentence of his superior. It is equally invalid to argue that if I doubt whether a woman is my wife, I am not bound to perform my duty as a husband.³⁴

§32 [Question 2, Article 4: War cannot be just on both sides]

THE FOURTH DOUBT is this: *whether war can be just on both sides.*

34. LS omit the word 'not' before 'bound'. For a similar discussion of the probable claims of conscience see *On the American Indians* intro. 1.

IN REPLY let us make the following propositions:

1. FIRST, except in ignorance it is clear *that this cannot happen*. If it is agreed that both parties have right and justice on their side, they cannot lawfully fight each other, either offensively or defensively.

2. SECOND, where there is provable ignorance either of fact or of law, *the war may be just in itself for the side which has true justice on its side, and also just for the other side, because they wage war in good faith and are hence excused from sin*. Invincible error is a valid excuse in every case. This is often the position of subjects: even if the prince who wages war knows that his cause is unjust, his subjects may nevertheless obey him in good faith, as explained in the previous article. In such situations, the subjects on both sides are justified in fighting, as is well known.

§33 [Question 2, Article 5: If a belligerent discovers that his cause is unjust, must he make restitution?]

THE FIFTH DOUBT follows from the preceding one: *if a prince or a subject who has started to fight an unjust war in ignorance subsequently realizes the injustice of his cause, is he required to make restitution?*

IN REPLY let us make the following proposition:

1. FIRST, if he was in the first place led to believe in the justice of his cause by probable reasons, *once he realizes its injustice he must restore anything he has taken which he has not already spent*; that is, everything he has gained as net profit, but not his expenses. It is a rule of law that a man who is not guilty must not suffer loss. Thus a man who in good faith attends a sumptuous dinner in a thief's house, where of course stolen goods are consumed, is not required to make restitution (except perhaps of the amount he would have spent at home on his everyday meal).

Again, if a man was unsure of the justice of the war, but obeyed the command of his prince, Silvestro Mazzolini da Priero opines that he would have to make a complete restitution, because he fought in bad faith (*Summa Sylvestrina*, s.v. bellum 1 §9). Against this, then, let us making a second proposition:

2. SECOND, the man in this position *is no more required to repay what he has spent than the previous one*, since, as I have already said, such a man in fact fights lawfully and in good faith. But if he was truly in doubt as to whether he could lawfully go to war, Silvestro Mazzolini da Priero's point might then be true, on the grounds that the man acted against his conscience.

TO CONCLUDE, the salient point to be considered is that war in itself is just; it is unjust and unlawful only in its accidents. But it is clear that one may have a right to reclaim a city or province, and yet find that right nullified by the danger of provoking greater conflict. As I have said, wars should only be waged for the common good (1. 3 §12); if the recovery of one city is bound to involve the commonwealth in greater damage, for instance the devastation of several cities, heavy casualties, or rivalry between princes and the occasion of further wars, there can be no doubt that the prince should cede his right and abstain from war.³⁵

Question 3: What may be done in a just war

ABOUT THE OTHER QUESTION there also arise a number of doubts; I mean the fourth article (1. 4), which was ‘what, and how much, may be done in the just war?’. The first doubt – and a strong one too – is this:

§34 Question 3, Article 1: Whether one may kill innocent people in a just war

PROCEEDING TO THE FIRST, it seems that one may:

1. We read in Josh. 6: 21 that the children of Israel killed the children in Jericho, and Saul slew the children and young women of Amalek (1 Sam. 15: 3, 8), both on the authority and command of the Lord. ‘Whatsoever things were written aforetime were written for our learning’ (Rom. 15: 4); therefore it must still be true today that it is lawful to kill the innocent if the war is just.

BUT ON THE OTHER HAND let us make the following propositions:

§35 1. FIRST, *it is never lawful in itself intentionally to kill innocent persons.* This is proved, in the first place, by Exod. 23: 7, where it says ‘the innocent and righteous slay thou not’. Second, the foundation of the just war is the injury inflicted upon one by the enemy, as shown above (1. 3 §13);

35. After the words ‘further wars’, LS add ‘to the damage of the Church, since the pagans are thereby given an opportunity of invading Christendom’; and at the end of the paragraph (in slightly variant texts): ‘If the king of France, for example, had the right to recover Milan but the ensuing war were to inflict intolerable damage and calamity on the kingdom of France and the duchy of Milan itself, it would clearly not be lawful for him to press his claim. Such a war ought to be waged either for the good of France or for the good of Milan; if both can expect nothing but harm from the war, it cannot be a just war.’ Barbier again relates these remarks to the political events of 1536–9 (see footnote 28 above), but the Milanese dispute continued into the 1540s, and there is no proof that the words are Vitoria’s

but an innocent person has done you no harm. *Ergo*, etc. Third, within the commonwealth it is not permissible to punish the innocent for the crimes of the evil, and therefore it is not permissible to kill innocent members of the enemy population for the injury done by the wicked among them. Fourth, the war would otherwise become just on both sides, since it is clear that the innocent would also have the right to defend themselves.³⁶ All this is confirmed by Deut. 20: 10–20, where the children of Israel are commanded, when they have captured a city, to smite every male thereof with the edge of the sword, but to spare the women and the little ones.

§36 It follows that even in wars against the Turks we may not kill children, who are obviously innocent, nor women, who are to be presumed innocent at least as far as the war is concerned (unless, that is, it can be proved of a particular women that she was implicated in guilt). It follows also that one may not lawfully kill travellers or visitors who happen to be in the enemy's territory, who are presumed innocent.³⁷ And the same is true of clergy and monks, unless there is evidence to the contrary or they are found actually fighting in the war. I think there can be no doubt about this.

§37 2. SECOND, *it is occasionally lawful to kill the innocent not by mistake, but with full knowledge of what one is doing, if this is an accidental effect*: for example, during the justified storming of a fortress or city, where one knows there are many innocent people, but where it is impossible to fire artillery and other projectiles or set fire to buildings without crushing or burning the innocent along with the combatants. This is proven, since it would otherwise be impossible to wage war against the guilty, thereby preventing the just side from fighting.³⁸ Nevertheless, we must remember the point made a moment ago (2. 5, conclusion: and cf. *On Civil Power* 1. 10): that care must be taken to ensure that the evil effects of the war do not outweigh the possible benefits sought by waging it. If the

36. LS make the following additions and changes (in italics): '... the war would become just on both sides, *which has been shown above to be impossible except in cases of ignorance, which is not applicable here. The consequence is clear, since the innocent may obviously defend themselves against anyone who tries to kill them.*'

37. LS amplify the list of innocent non-combatants in this sentence as follows: 'In wars against fellow-Christians, the same argument holds true of harmless farming folk, and other peaceful civilians (*gens togata*), who are all to be presumed innocent unless there is evidence to the contrary; and also travellers or visitors who happen to be in the enemy's territory, who are presumed innocent and are not really enemies at all.'

38. LS add: 'Similarly, on the other hand, if a town is unjustly attacked and justly defended, it is permissible to fire artillery and other projectiles at the besieging enemy encampments, though there may be children or non-combatants among them.'

storming of a fortress or town garrisoned by the enemy but full of innocent inhabitants is not of great importance for eventual victory in the war, it does not seem to me permissible to kill a large number of innocent people by indiscriminate bombardment in order to defeat a small number of enemy combatants. Finally, it is never lawful to kill innocent people, even accidentally and unintentionally, except when it advances a just war which cannot be won in any other way. In the words of the parable: 'Let the tares grow until the harvest, lest while ye gather up the tares, ye root up also the wheat with them' (Matt. 13: 24–30).

§38 Against this, one may ask whether it is lawful to kill people who are innocent, but may yet pose a threat in the future. For example, the sons of Saracens are harmless, but it is reasonable to fear that when they reach manhood they will fight against Christendom. And according to the previous argument adult enemy civilians are also presumed innocent, but they too could later take up arms and fight. The question is whether it is lawful to kill such people; and the answer would seem to be yes, since one is permitted to kill other innocent people too, as an accidental effect. When, in Deut. 20: 10–20, the children of Israel are commanded, when they have captured a city, to smite every adult male thereof with the edge of the sword, it is not to be supposed that every one of them is a combatant.

In reply, however, I say this: it is perhaps possible to make a defence of this kind for killing innocent people in such cases, but I nevertheless believe that it is utterly wrong. It is never right to commit evil, even to avoid greater evils. It is quite unacceptable that a person should be killed for a sin he has yet to commit. In the first place, there are many other measures for preventing future harm from such people, such as captivity, exile, etc. It is not lawful to execute one of our fellow members of the commonwealth for future sins, and therefore it cannot be lawful with foreign subjects either; I have no doubts on this score.³⁹ It follows that, either after the battle has been won or even in the midst of hostilities, if a man's innocence is proved and the soldiers are able to set him free, they must do so. As for the authorities adduced to prove the contrary, we may reply that the passages in question refer to a special command of God, who was angry with the peoples in question and wished to destroy them utterly, just as he rained fire on Sodom and Gomorrah which devoured both guilty and innocent together. But he is the Lord of all, and did not intend this to be a general rule. The same reply holds true for the passage from Deut. 20: though what is said there is intended as a general law of war for all time, what the Lord seems to

39. This sentence is omitted by *LS*.

have meant was that in reality all the adult men in an enemy city are to be thought of as enemies, since the innocent cannot be distinguished from the guilty, and therefore they may all be killed.

§39 [Question 3, Article 2: Whether one may plunder innocent people in a just war]

ANOTHER VALID DOUBT is *whether one may nevertheless plunder the innocent in the just war.*

IN ANSWER TO THIS let us make the following propositions:

1. FIRST, it is certain *that we may plunder them of the goods and property which have been used against us by the enemy.* This is clear, because otherwise we cannot gain victory against them.⁴⁰ Indeed, we may take the money of the innocent, or burn and ravage their crops or kill their livestock; all these things are necessary to weaken the enemies' resources. There can be no argument about this.

From this there flows the corollary that if the state of war is permanent, it is lawful to plunder the enemy indiscriminately, both innocent and guilty, since the enemy rely upon the resources of its people to sustain an unjust war, and their strength is therefore weakened if their subjects are plundered.

§40 2. SECOND, if the war can be satisfactorily waged without plundering farmers or other non-combatants, *it is not lawful to plunder them.* This is the opinion of Silvestro Mazzolini da Priero in his *Summa Syluestrina*, s.v. bellum 1 §10: since war is justified on the grounds of injury received, it cannot be lawful in the law of war to kill or plunder the innocent if the injury can be compensated in any other way. Indeed, Mazzolini adds that even if there is just cause to plunder the innocent, once the war is over the victor is required to restore whatever is left of the property he has taken from them. But I do not think this latter condition is necessary, since, as I shall show below, if they have acted in accordance with the laws of war, all gains are at the disposal of those who have waged the just war. Hence it is my opinion that the victors are not required to restore those things which they have rightfully captured. Nevertheless, Mazzolini's opinion is merciful, and not unreasonable. More, it is quite unlawful to plunder travellers or visitors⁴¹ unless their guilt is proven, since they are not of the enemy but are presumed to be innocent.

40. LS add: 'which is the purpose of war'.

41. LS hospites : hostes P.

§41 3. THIRD, if the enemy refuse to restore the property they have unjustly seized, and the injured party is unable to recover his property in any other way, then *he may seek redress in any way he chooses, from the innocent or the guilty*. For example, if French bandits plunder Spanish territory and the king of France refuses to compel them to make restitution, though able to do so, then the Spaniards may, with their prince's permission, plunder French merchants or farmers, however innocent they may be; though the French commonwealth or king may not initially have been to blame, by their refusal to punish the injustice done by their own subjects they put themselves in the wrong, as Augustine says (*Quaest. in Heptateuch.* 6. 10), and the injured prince can therefore seek satisfaction from any or all the members of the offending commonwealth. Hence the letters-of-marque or *reprisals* granted by princes in these cases are not in themselves altogether unjust;⁴² because of the negligence and injustice of another prince, the prince gives to one of his subjects the right to recover his property even from innocent victims. Such grants are nevertheless dangerous, as they give an excuse for mere piracy.

§42 [Question 3, Article 3: Whether one may enslave the innocent in a just war]

A THIRD DOUBT, given that one may not lawfully kill children and innocent non-combatants, is *whether one may nevertheless enslave them*.

IN ANSWER TO THIS let us make the following proposition:

1. *THAT one may lawfully enslave the innocent under just the same conditions as one may plunder them*. Freedom and slavery are counted as goods of fortune; therefore, when the war is such that it is lawful to plunder all the enemy population indiscriminately and seize all their goods, it must also be lawful to enslave them all, guilty and innocent alike. Hence, since our war against the pagans is of this kind, being permanent because they can never sufficiently pay for the injuries and losses inflicted, it is not to be doubted that we may lawfully enslave the women and children of the Saracens. But since it seems to be accepted in the law of nations that Christians cannot enslave one another, it is not lawful to enslave fellow-Christians, at any rate during the course of the

42. The reference is to the official patents or *cartas de represalia* given by various crowns to privateers or *corsairs*, as they were known in Spain, to plunder the ships of other nations for their own profit.

war. If necessary, when the war is over one may take prisoners, even innocent women and children, but not to enslave them, only to hold them to ransom; and this must not be allowed to go beyond the limits which the necessities of warfare demand, and the legitimate customs of war permit.⁴³

§43 [Question 3, Article 4: Whether one may execute hostages]

A FOURTH DOUBT is *whether one may execute enemy hostages, either received during a truce or taken in war, if the enemy break their promises?*

IN ANSWER TO THIS let us make the following single proposition:

1. THAT *if the hostages would otherwise be combatants*, for instance if they have already borne arms against us, *they may be executed*; but *if they are non-combatants*, it is clear from what has been said that *they may not*. There is no arguing against this.⁴⁴

§44 [Question 3, Article 5: Whether one may execute all the enemy combatants]

THE FIFTH DOUBT is *whether one may execute all the enemy combatants in a just war?*

IN ANSWERING THIS let us remember the following points: that war is waged, in the first place, for our own defence and the defence of our property; then, for the recovery of property that has been seized; third, in revenge for an injury received; and lastly, to establish peace and security. With these premisses in mind, let us make the following proposition:

§45 1. In the actual conflict of battle, or during the storming or defence of a city, in short so long as matters hang dangerously in the balance, *it is lawful to kill indiscriminately all those who fight against us*. It is clear that the combatants cannot very well wage war without eliminating their opponents. But the whole point of this doubt is, rather, *whether we may lawfully kill all the enemy combatants after victory has been gained*, when

43. P omits a pair of lines, from 'one may take . . . ' to the end of the sentence, here supplied from LS.

44. LS substitute for this last sentence: 'as when they are women or children or other innocent persons'.

there is no longer any danger from them. And the answer to this would seem to be that we may, according to the passage in Deuteronomy quoted above, where the Lord included amongst his precepts the particular command to put to death all the inhabitants of a captured city, with these words:

When thou comest nigh unto a city to fight against it, then proclaim peace unto it. And if it make thee answer of peace, and open unto thee, then it shall be that all the people that is found therein shall be tributaries unto thee, and they shall serve thee. And if it will make no peace with thee, but will make war against thee, then thou shalt besiege it; and when the Lord thy God hath delivered it into thine hands, thou shalt smite every male thereof with the edge of the sword, but the women and the little ones.

(Deut. 20: 10–14)

BUT ON THE OTHER HAND let us make the following further propositions:

§46 2. *After victory has been gained and the matter is beyond danger, we may lawfully kill all the enemy combatants.* The proof of this is that war is not only ordained for the recovery of lost possessions, but also for the avenging of injury, and therefore one may lawfully execute those responsible for the injury inflicted. Furthermore, we have the same right against our fellow members of the commonwealth when they commit crimes, and therefore we must have this right against foreigners, since (as discussed above) by the laws of war the prince has the same authority over the enemy as a judge or legitimate prince. And last, although there may be no present danger from the enemy, there can be no future guarantee of our security from their attack.⁴⁵

§47 3. *However, it is not always lawful to execute all the combatants for the sole purpose of avenging injury.* The proof of this is that, when dealing with our fellow members of the commonwealth, if the crime is the responsibility of an entire city or province, it is not lawful to kill all the delinquents; in a popular rebellion, it would not be permissible to execute and destroy the entire populace. It was for just such an act that Theodosius was excommunicated by Ambrose.⁴⁶ Such action would be against the public good, which is the purpose of war and peace. And if this is so, then it cannot be lawful to kill all enemy combatants either. We must take account of the scale of the injury inflicted by the enemy, of our losses, and of their other crimes, and base the scale of our revenge on this calculation, without cruelty or inhumanity. In this

45. L adds: 'unless they are deterred by fear of punishment'.

46. The reference is to the massacre of Thessalonica in 390 AD, to St Ambrose's subsequent excommunication of Theodosius I, and to the emperor's penitent submission.

connexion, Cicero remarks that we should punish wrongdoers only so far as justice and humanity permit (*De officiis* II. 5. 18). Sallust also says that 'our ancestors, the most God-fearing and righteous of men, never took anything from the vanquished except the licence to do harm' (*Coniuratio Catilinae* 12. 3-4).

§48 4. *It is sometimes lawful and expedient to kill all the enemy combatants.* The proof runs as follows: war is waged to produce peace, but sometimes security cannot be obtained without the wholesale destruction of the enemy. This is particularly the case in wars against the infidel, from whom peace can never be hoped for on any terms; therefore the only remedy is to eliminate all of them who are capable of bearing arms against us, given that they are already guilty. This is how the precept given in Deut. 20 should be understood. In other cases, however, in wars against fellow-Christians I do not believe that it is permissible. The necessary result would be to provoke further offences and wars between princes (Matt. 18: 7): therefore, if the victor were always to put to death all his adversaries, great harm would result for humankind. It is better that the punishment be fitted to the crime, and the wicked man beaten according to his fault, by a certain number of stripes (Deut. 25: 2-3). And in this connexion it must be taken into consideration that subjects neither must nor ought to examine the causes of war, but may follow their prince into war, content with the authority of their prince and public council; so that in general, even though the war may be unjust on one side or the other, the soldiers on each side who come to fight in battle or to defend a city are all equally innocent. Once they are defeated and pose no further threat, it is my opinion that not so much as a single one of them should be killed, so long as the presumption is that they fought in good faith.

§49 [Question 3, Article 6: Whether one may execute those who have surrendered or been taken prisoner]

THE SIXTH DOUBT is *whether one may execute those who have surrendered or been taken prisoner, supposing that they too were enemy combatants?*

I REPLY that, in itself, there is no reason why prisoners taken in a just war or those who have surrendered, if they were combatants, should not be killed, so long as common equity is observed. But as many practices in war are based on the law of nations, it appears to be established by custom that prisoners taken after a victory, when the danger is past, should not be killed unless they turn out to be deserters and fugitives.

This law of nations should be respected, as it is by all good men. As for those who surrender, however, I have neither read nor heard of such a custom of leniency.⁴⁷

§50 [Question 3, Article 7: Whether all the booty taken in war belongs to the captors]

THE SEVENTH DOUBT is *whether all the booty taken in war belongs to those who capture it?*

IN ANSWER TO THIS let us make the following proposition:

1. There is no doubt that *all booty taken in a just war up to a value sufficient to recompense the property unjustly seized by the enemy, and also including reparation of the costs of the war, become the property of the captors. No proof of this conclusion is needed, since this is the very purpose of war.*

But setting aside considerations of restitution and reparation and insisting solely on the laws of war, we must make a distinction between booty which consists of movable goods such as money, clothes, or gold, and real or immovable property such as land, towns, and forts. In this connexion let us make the following additional proposition:

§51 2. At least in the law of nations (*ius gentium*) all movable goods become the property of the captors, even if their value exceeds that of compensation of losses. This is clear from the words of the laws *Si quid bello* and *Hostes* (*Digest* XLIX. 15. 28 and 24), from the canon *Ius gentium* (*Decretum* D.1. 9), and more expressly still from the law *Item ea quae ab hostibus* (*Institutions* II. 1. 17), where it is stated that ‘by the law of nations (*ius gentium*) all booty taken from the enemy immediately becomes ours, to the extent that even free men may be taken into slavery by us’. Ambrose tells us in his *De Abraham* I. 3 that when Abraham slew the four kings the booty belonged to him as victor, even though he refused to accept it (Gen. 14: 14–24); this passage is cited in *Decretum* C.23. 5. 25, and is supported by the authority of the Lord’s words in Deut. 20: 14, where it is said of the capture of a city that ‘all that is in the

47. LS add: ‘Indeed, when the citadels of cities are surrendered, those who yield themselves up take care to include their own lives and safety in the terms of submission. Clearly this implies that they are afraid that if they surrender without making such terms, they will be killed; and one hears that this has frequently been the case. Therefore it is not unjust, if a city is surrendered without such precautionary terms, for the prince or judge to order the most guilty [‘nocentiores’ S : ‘notiores’ L] of the enemy to be executed.’

city, even all the spoil thereof, shalt thou take unto thyself; and thou shalt eat the spoil of thine enemies, which the Lord thy God hath given thee'.

This is the opinion held by Hadrian in his *Quaestiones* on the fourth book of Lombard's *Sentences*, in the question devoted to restitution, in particular in the just war; and by Silvestro Mazzolini da Priero, in his *Summa Sylvestrina*, s.v. bellum 1 §1 and §10, where he says that 'when the cause is just, one is not required to restore property captured as booty, as stated in the canon *Si de rebus* (*Decretum* C.23. 7. 2); whence we infer that goods taken in a just war are not to be counted towards the satisfaction of the principal injury, as Guido de Baysio holds in his *Rosarium* on the canon *Dominus Deus noster iubet* (C.23. 2. 2)'. The same view is held by Bartolus of Sassoferrato on the law *Si quid in bello* mentioned above (*In Digest* XLIX. 15. 28).⁴⁸ And this is to be understood as true, even if the enemy is prepared to make satisfaction for the losses and injury caused. Nevertheless, Silvestro Mazzolini da Priero sets a limit to this right, and correctly so, proposing that it should extend only so far as is consonant with an equitable satisfaction of the damage and injury sustained. We are not to suppose that if the French lay waste a single village or some paltry town in Spain, the Spaniards thereby have the right to plunder the whole of France, even if they are able to do so. They must do so only in proportion to the extent of their own losses.

But this conclusion leads to a further doubt: whether it is lawful to allow our soldiers to sack a city? Let us therefore make a further proposition:

- §52 3. THIRD, *this is not of itself unlawful if it is necessary to the conduct of the war*, whether to strike terror into the enemy or to inflame the passions of the soldiers. So says Silvestro Mazzolini da Priero, *Summa Sylvestrina*, s.v. bellum 1 §11). It is likewise permissible to set fire to a city when there are reasonable grounds for doing so. But this sort of argument licenses the barbarians among the soldiery to commit every kind of inhuman savagery and cruelty, murdering and torturing the innocent, deflowering young girls, raping women, and pillaging churches. In these circumstances, it is undoubtedly unjust to destroy a Christian city except in the most pressing necessity and with the gravest of causes; but if necessity decrees, it is not unlawful, even if the probability is that the soldiery will commit crimes of this kind. Their officers, however, have a duty to give orders against it.

48. The scribe of *P* skipped from the citation of the *Decretum* in the previous sentence to the one in this sentence, omitting the words 'whence . . . *Rosarium* on'. I have restored the text from *LS*.

§53 4. FOURTH, notwithstanding all this, *soldiers may not plunder or burn without the authority of their prince or commander*. The soldiers are not the judges, but simply the executors; if they behave otherwise, they must make restitution.

§54 But the question of immovable property is more difficult. In this connexion, let us state these further propositions:

5. FIFTH, there is no doubt that *it is lawful to occupy and keep land and forts*, to the extent necessary for compensation of losses.⁴⁹ There is certainly no reason in divine or natural law why this dispensation should be more applicable to movable goods than to immovables.

§55 6. SIXTH, to protect life and safety where there is danger from the enemy, *it is lawful to occupy and hold any enemy fort or city which is necessary for our defence*.⁵⁰

§56 7. SEVENTH, for an injury received *it is also lawful to deprive the enemy of part of his land in the name of punishment*, that is, in revenge and according to the scale of the injury. By this token, it is sometimes lawful to occupy a fort or town, but the governing factor in this case must be moderation, not armed might. If necessity and the requirements of war demand that the greater part of enemy territory or a large number of cities be occupied in this way, they ought to be returned once the war is over and peace has been made, only keeping so much as may be considered fair in equity and humanity for the reparation of losses and expenses and the punishment of injustice. Punishment should fit the crime; it would intolerable if we were allowed to occupy the whole kingdom of France because they had plundered a few cattle or burnt a single village. But the fact that we may occupy a part of enemy territory or an enemy city on these grounds is quite clear from the passage already cited from Deut. 20 where the Lord gives permission to occupy a city which has refused to surrender peacefully in war. Likewise, we are allowed to punish our own domestic malefactors by depriving them of a fortress or house, according to their crime, and therefore we must have the same right against our external enemies. Similarly, a legitimate judge of a higher court may fine the perpetrator of a crime by confiscating a city or fort belonging to him; so a prince who has been offended may do the same, since the law of war effectively makes him judge.

49. *LS* add: 'for example, if the enemy have destroyed a fort, or burnt a city, woodlands, vineyards, or olive groves belonging to us, we may in turn occupy the enemy's fort or town. If it is lawful to exact compensation from the enemy for the property they have seized, there is certainly no reason, etc.'

50. *LS* add: 'or to deprive the enemy of a base from which they may harm us.'

It was in this way and on these grounds that the Roman Empire was built up and extended, using the law of war as their title to occupy the cities and lands of enemies who had done them injury; and yet the justice and legitimacy of the Roman Empire is defended by Augustine, Jerome, Ambrose, Aquinas, and other holy doctors. Indeed, our Lord and Saviour Jesus Christ seems to have signalled his approval of the empire in those words of His, 'Render therefore unto Caesar the things which are Caesar's' (Matt. 22: 21); and Paul too, when he appealed to Caesar's judgment seat (Acts 25: 10–11), and when he admonished his brothers to be subject unto the higher powers and to pay tribute to their princes (Rom. 13: 1–6), since at that time all princes had their authority under the Roman Empire.⁵¹

§57 [Question 3, Article 8: Whether one may impose tribute on a defeated enemy]

THE EIGHTH DOUBT is *whether one may impose tribute on a defeated enemy?*

I REPLY that *it is certainly lawful to do so*, not only for the compensation of losses, but also as punishment and revenge. I have already said enough above to prove this point, and the passage cited from Deut. 20 leaves no room for doubt.⁵²

§58 [Question 3, Article 9: Whether one may depose the enemy's princes and set up new ones]

THE NINTH DOUBT is *whether we may depose the enemy's princes and set up new ones in their place, or take over the government ourselves?*

51. For this defence of the Roman Empire, compare *On the American Indians* 2. 1, 3. 7. The passages to which Vitoria refers may be identified as Augustine, *De ciuitate dei* III. 10, XVIII. 22; Jerome, *In Isaiam* XVII. 40; Ambrose, *Epist.* 61; and Aquinas, *De regimine principum* III. 4–5 (Vitoria 1981: 196–9).

52. LS (but not V) add: 'where it says "when thou comest nigh unto a city to fight a just war against it, if it make thee answer of peace, and open unto thee, then it shall be, that all the people that is found therein shall be tributaries unto thee, and they shall serve thee". And this is the law and custom of war as it obtains.' The purpose of the addition seems to be to make explicit the connexion with the Spanish imperial policy of the *requerimiento* (see the Glossary, s.v., and compare *On the American Indians* 2. 2, footnote 52, and 2. 4). It is, however, irrelevant to the present context.

IN ANSWER TO THIS let us make the following propositions:

1. *It is not lawful to do this in every case, or for any cause of just war.* This is clear from what has been said: punishment should not exceed the crime. On the contrary, punishments should be diminished in favour of mercy. This is a rule not only of human law, but also of natural and divine law.⁵³ Therefore, although the harm done by the enemy may be a sufficient cause of war, it will not always be sufficient to justify the extermination of the enemy's kingdom and deposition of its legitimate native princes; this would be altogether too savage and inhumane.

§59 2. However, it cannot be denied that there may sometimes be legitimate reasons for supplanting princes, or for taking over the government. This may be because of the number or atrocity of the injuries and harm done by the enemy, and especially when security and peace cannot otherwise be ensured, when failure to do so would cause a dangerous threat to the commonwealth. This is clear enough; if it is lawful to occupy a city for this reason, as explained above, then it must be lawful to remove its princes.⁵⁴

But it is to be noted, with reference to articles 6, 7, 8, and 9, that sometimes, and indeed often, not only the princes themselves but also their subjects, though in fact they have no just cause, nevertheless wage war in good faith – and in such good faith, I emphasize, that they are to be excused from any guilt. Take, for example, the case of a war waged, after careful examination, on the advice of judgment of the wisest men: in this event, no person who is not directly responsible should be punished, and though the victor may lawfully recover the property which was seized from him, and perhaps even his war expenses, he may not kill anyone after victory has been won, nor exact just retribution, nor demand satisfaction from the temporal property of the vanquished, since all these things can only be done in the name of punishment; manifestly, punishment should not fall upon the innocent.

§60 [Conclusion: Three rules of war]

FROM ALL THIS we may deduce a few rules and canons of warfare:

1. FIRST CANON: since princes have the authority to wage war, *they should strive above all to avoid all provocations and causes of war.* If it be

53. The legal principle that 'laws should always be interpreted in the more lenient sense' is stated, for example, in *Sent* 5. 12. 15 and *Digest* XLVIII. 19. 42.

54. *LS* add: 'and the same holds true of a whole country and its prince, if the cause is commensurate'.

possible, the prince should seek as much as lieth in him to live peaceably with all men, according to Paul's words in Rom. 12: 18. He should remember that other men are his neighbours, whom we are all enjoined to love as ourselves (Matt. 22: 39); and that we all have a single Lord, before whose tribunal we must each render account for our actions on the day of judgment. It is a mark of utter monstrosity to seek out and rejoice in causes which lead to nothing but death and persecution of our fellow-men, whom God created, and for whom Christ suffered death. The prince should only accede to the necessity of war when he is dragged reluctantly but inevitably into it.

2. SECOND CANON: once war has been declared for just causes, the prince should press his campaign not for the destruction of his opponents, but *for the pursuit of the justice for which he fights and the defence of his homeland*, so that by fighting he may eventually establish peace and security.

3. THIRD CANON: once the war has been fought and victory won, he must use his victory with moderation and Christian humility. The victor must think of himself as a judge sitting in judgment between two commonwealths, one the injured party and the other the offender; he must not pass sentence as the prosecutor, but as a judge. He must give satisfaction to the injured, but as far as possible without causing the utter ruination of the guilty commonwealth. Let him remember above all that for the most part, and especially in wars between Christian commonwealths, it is the princes themselves who are completely to blame; for subjects usually fight in good faith for their princes.

And so I end this whole disputation about the Indians, which I have undertaken for the glory of God and the utility of my fellow-men.⁵⁵

Here ends the second relection On the Indies of the very reverend Father and most erudite Master Friar Francisco de Vitoria, which he delivered at Salamanca in the year of Our Lord 1539, on the 19th day of June, to the glory of almighty God and the Blessed Virgin Mary His mother, and for the teaching of our fellow-men.

Friar Juan de Heredia

55. LS substitute the last sentence with: 'and it is most unjust that, as the poet puts it, the Greeks should suffer for every folly of their kings', a quotation from Horace, *Epistles* II. 2. 14. The colophon is unique to P.

APPENDIX A

FOUR LETTERS ON POLITICAL MATTERS

According to the Portuguese-domiciled Flemish humanist Nicholas Clénard, Vitoria was an energetic and elegant Latin letter-writer 'who could have achieved European fame as a stylist if only he had set his mind to publication'.¹ However, only five of his letters have survived, all of them business letters rather than literary epistles, and all, unfortunately, composed in the vernacular. Vitoria's crabbed Spanish was markedly inferior to his Latin.

For reasons which are unclear, in the letter to Arcos (1), and to a lesser extent the letter to Vique (2), Vitoria wrote a number of phrases in Latin. The tags are too tiresome to be a stylistic device, too transparent to be a code, and probably indicate merely that Vitoria was more at ease thinking in the scholastic language. The tags have been translated, but printed in italics.

Four of the letters are translated below. The first two were discovered among the papers of Vitoria's superior Miguel de Arcos, OP, in Seville, Biblioteca Universitaria MS 333-166-1, fols. xv-xvi^r, by Beltrán de Heredia (1931: 169-80). The last two are preserved in Madrid, Biblioteca Nacional MS Res-17, fols. 147-50, and were discovered by Hinojosa.²

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1. Letter to Joannes Vasacus, Évora, 24 December 1534 (A. Roersch, *Correspondance de Nicolas Clénard*, 3 vols., Brussels, 1940-1: I. 37-44); see also Clénard's letter 'To Christendom, on the Crusade against Islam', Fez, c.1540-1 (*ibid.*, I. 206-39, lines 747-58).
 2. *Discursos leídos ante la Real Academia de la Historia en la recepción pública de D. Eduardo de Hinojosa el día 10 de marzo de 1889* (Madrid, 1889), pp. 65-7. The editions used here are Vitoria 1967: 137-9, and 1981: 287-96.

Letter 1: Letter to Miguel de Arcos, OP
Salamanca, 8 November [1534]

Vitoria advises his religious superior to have nothing to do with the complex question of compositions in Peru. The massacre at Cajamarca and subsequent assassination of the Inca Atahualpa by Pizarro (July 1533) attracted much notice in Spain. Some soldiers who had received a share of the booty afterwards expressed a desire to confirm their illegal titles by compounding (see the Glossary, s.v. composición); an inquiry on the lawfulness of this measure had been sent by one such perulero ('Peruvian adventurer') to Father Arcos. The year of the letter is supplied on the basis of the historical detail mentioned in footnote 5.

Very reverend Father,

As for the case of Peru, I must tell you, *after a lifetime of studies and long experience*,³ that no business shocks me or embarrasses me more than the corrupt profits and affairs of the Indies. Their very mention freezes the blood in my veins. Yet I work as best I can, so that if they make off with the assets, at least I suffer no loss of that other asset, a clear conscience. Mine may be less eye-catching but I think it no less valuable.

My usual course in such cases is *first to run away from them*. I do not give [or] take; be sure he has many profits; I mean, apart from the one mentioned [in] the letter.⁴

I try to do the same with the *peruleros* when they turn up here, as a few sometimes do. I do not raise my voice '*or beat my breast*' (Cicero, *Pro Milone* 7. 18) against one side or the other until I can no longer pretend; then I merely say I do not understand and can see no safe or just way out of it, and tell them to consult others who understand it better. If you condemn their behaviour roughly, they lose their temper; some cite the pope and accuse you of heresy for casting doubt on His Holiness' actions, others cite the emperor and accuse you of condemning

3. '*tam diuturnis studiis tam multo usu*': compare Cicero, *De oratore* I. 4. 15.

4. MS: *no doy mi tomo que sepa que tiene muchos beneficios, digo fuera del dicho e carta*. The sentence, which is either corrupt or in code, has perplexed all editors; my translation is conjectural, reading *ni* for *mi* and *en* for *e*.

His Majesty and the conquest of the Indies. They find ready listeners and supporters. *'So I confess my weakness'* (2 Cor. 12: 5), and keep as far as I can from crossing swords with these people.

But if utterly forced to give a categorical reply, in the end I say what I think. Some of these Peruvian adventurers, *I fear*, may be the type *'that desire to be rich [and fall into temptation]'* (1 Tim. 6: 9), of whom it was said *'[it is easier for a camel to go through the eye of a needle than] for a rich man to enter into the kingdom of heaven'* (Matt. 19: 23–4). Here, since the property belonged to someone else, they can allege no title other than *the law of war*.

First, I do not understand the justice of the war. *I do not dispute* the emperor's right to conquer the Indies, which *I presuppose* he may, most strictly; but as far as I understand from eyewitnesses who were personally present during the recent battle with Atahualpa, neither he nor any of his people had ever done the slightest injury to the Christians, nor given them the least grounds for making war on them.

But the defenders of the *peruleros* reply that their soldiers were not obliged to examine this, but only to obey and carry out their captains' orders.

I accept this response in the case of those who did not know that there was no other cause for this war than sheer robbery – which was all or most of them. Other more recent conquests have, I think, been even more vile. But I cannot let the matter rest at this. I grant that all the battles and conquests were good and holy, but we must still consider that this war *by the very admission* of the Peruvian conquistadors is not against strangers, but against true vassals of the emperor, as if they were natives of Seville; *and, furthermore, truly ignorant of the justice of the war*, convinced that the Spaniards are tyrannical oppressors waging unjust war on them. Even if the emperor has just titles to conquer them, the Indians do not and cannot know this. *They are most certainly innocents in this war*.

But even supposing the justice in the war is all on the side of the Spaniards, hostilities may not proceed beyond subduing them and compelling them to accept the emperor as prince *with the infliction on them of as little damage and loss as possible*. This does not mean robbing them and leaving them destitute of everything regarding their temporal goods. War, especially against one's own vassals, must be undertaken and waged for the good of the vassals and not of the prince, *'if there is any truth in the oracles of seers'* (Ovid, *Metamorphoses* XV. 879) – that is, of the saints and doctors of the church. I know of no justification for robbing and plundering the unfortunate victims of defeat of all they possess and even what they do not possess.

In truth, if the Indians are not men but monkeys, *they are incapable of injury*. But if they are men, and our neighbours, and *as they claim* vassals of the emperor, *I cannot see how* to excuse these conquistadors of utter impiety and tyranny; nor can I see what great service they do to His Majesty by ruining his vassals. Even if I badly wanted the archbishopric of Toledo which is just now vacant⁵ and they offered it to me on condition that I signed or swore to the innocence of these Peruvian adventurers, I would certainly not dare do so. Sooner my tongue and hand wither than say or write a thing so inhuman, so alien to all Christian feeling! On their heads be it, and let them leave us in peace. There will be no lack of men, *even within the Dominican order*, to salve their consciences, *and even to praise their deeds and butchery and pillage*.

There remains the question of the proposal for compounding (*composición*). *Renewed uproar* from the zealots of the faith and pope against anyone who dares cast doubt on the pope's concessions! *May I not even ignore what I do not know?* I do not understand the matter, but in this case I would not dare rely on compounding. *They know well enough. But what* if they send the case to Rome? If St Gregory were on Peter's throne I should be happy with his judgment; as it is, I would reserve a few scruples,⁶ especially as this strikes me as no case of 'uncertain restitution'. If those who committed the robbery sincerely wished to make restitution, we all know whom they should repay. If they plundered Salamanca we should not consider it a case of 'uncertain restitution', although we might not know how much Tom, Dick, and Harry lost. Even so, if this man were to give half to the poor *on the mandate of the pope, or indeed the bishop*, I would allow him to keep the remainder; but to excuse him for a payment of two or three hundred ducats, this *I cannot comprehend*.

And last, if you can believe it, I commend you to God; let this be resolved abroad. *Et uale semper in Domino*.

Your most attentive *Frater Franciscus Vitoria*
Salamanca, 8 November

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5. The see was vacant after the recent death of Alonso Fonseca, archbishop of Toledo from 1524 to 1534, a noted Erasmian.
 6. Alessandro Farnese was elected Pope Paul III a month earlier, on 13 October 1534; at the instigation of Dominican missionaries he later defended the Indian cause in the bulls *Veritas ipsa* and *Sublimis Deus* (1537). It is possible that in making this acidulous comment, Vitoria was still thinking of his predecessor Clement VII, a pope whose relations with Charles V had been unhappy.

Letter 2: To Fray Bernardino de Vique, OP
Salamanca, 18 March [1546?]

Vitoria answers a question about the Portuguese slave-trade. Arcos notes:

To understand these answers on the enslavement of blacks, one must know the questions, which are as follows: First, they take trinkets to Guinea to lure the blacks, who are seized when they come to look at them (the Master replies to this in the first clausula of the letter); second, about those who have been enslaved in war (reply in the second clausula); third, the blacks have a custom that when they are leading one of their own to execution, if anyone can be found to buy the criminal they commute the sentence to slavery: the question is whether this slavery must be perpetual or temporary (answer in the third clausula); and fourth, can we rest easy in conscience on the assurance that the king of Portugal and the members of his Council will not permit unjust trading?

Very reverend Father,

Soludem in Domino. Your Reverence's letters show me great love, and so does the present of the olives, for which I kiss your hands; they were excellent. God knows, I am too ill to eat fish, let alone olives; but I value them much more as gifts for my friends than as food for myself.

As for your questions: *first*, let Your Reverence be assured that anyone who takes it upon himself to examine this question of Portuguese trading (*contratación*) will find no lack of things to criticize. The usual remedy is for those who have a part in it to close their eyes and follow the crowd, without striving officiously to ask questions.

1. But to come to your particular question about the slaves whom the Portuguese export from their India:⁷ undoubtedly, if it is true the Portuguese seize the blacks by this cowardly ruse, I can see no justification for considering them proper slaves. But I do not suppose this trick is common, at least among the Portuguese, though it may sometimes have occurred; it is hardly likely the king of Portugal would permit such inhumanity, or that there should be no one to inform him of it. At any rate, without further information, I see no reason why the gentlemen who purchased the slaves here in Spain should have any scruples. It is sufficient that they should be *prepared* to fulfil their obligations should it be proved to them that these goings-on are commonplace.

7. The Portuguese by this time had trading-stations on the Goa coast of India, but Arcos' note shows that 'Portuguese India' is here an expression for the Guinea coast of West Africa. On the historical background, see Pagden 1986: 32–3.

2. To the second doubt, about those who were enslaved in their own countries in war: I see no reason to raise great scruples here either, for the Portuguese are not obliged to discover the justice of wars between barbarians. It suffices that a man is a slave in fact or in law, and I shall buy him without a qualm.

3. More doubtful, it seems to me, is the case of those others who are condemned to death – doubtless an unjust death – and ransomed by Christians. But even in this case I see no injustice; there is no doubt that even in taking him for a slave, *I do good business*.⁸ If this were about our own country, where a man once free can never be made a slave, it would be another matter. But in a country where one can be enslaved in numerous ways, or even sell oneself voluntarily, why should not a man voluntarily agree to become the slave of someone who is prepared to rescue him, especially if by the laws of the same country he would become a true slave of any native who cared to ransom him? Besides, a Christian could buy him from the person who had ransomed him; why not directly from himself? In my view he can be considered a slave for the duration of his life.

A greater scruple than any of these, and more than a mere scruple, is that in general they treat their slaves inhumanly, the masters forgetting both that their slaves are fellow-men, and St Paul's saying that masters and servants both have a Master in heaven to whom they must render account (Col. 4: 1). If treated humanely, it would be better for them be to slaves among Christians than free in their own lands; in addition, it is the greatest good fortune to become Christians.

4. Likewise, if the reality of some unsuitable thing or injustice were affirmed by a good many people, I should not dare wholly to cling to the excuse that 'the king and his council know and approve of it'. Kings often think from hand to mouth, and the members of their councils even more so. But as for a thing so outlandish as the one mentioned in the first article, *it lacks the likelihood of truth*. At least, I cannot believe that it is a thing commonly practised. And now you must pardon me, Your Reverence, for I can move neither forward nor back.⁹ *Et uale semper in Domino*.

Your most attentive *Frater Franciscus Vitoria*
Salamanca, 18 March

8. The Latin tag is ironic; it is a good act to save a man's life by enslaving him, but Vitoria implies that slave-traders also do 'good business' by this expedient.

9. Vitoria refers to the acute gout which plagued him for the last ten years of his life, often leaving him immobilized and bed-ridden for months on end.

**Letter 3: To Don Pedro Fernández de Velasco, constable of Castile
Undated [September 1536 – February 1537]**

Vitoria comments on the death on 15 September 1536 in Aix-en-Provence of Antonio de Leiva, commander of Charles V's troops against the French, renowned as victor of the siege of Pavia in 1524–5. The letter is probably datable between 15 September and February 1537, when Charles V arrived in Valladolid.

Most illustrious lord,

Although I had little to say, I wrote Your Lordship a long letter and sent it with Don Juan's. I trust the postman was reliable and that the letters did not go astray.

My lord the Count of Siruela had already written to me with the news of Your Lordship's arrival in the Queen's household.¹⁰ I suppose Your Lordship's return to court is to await the arrival of His Majesty. Please God the waiting will not be in vain this time; we are all worn out with the delay. May He preserve you for ever and prosper you in good deeds, public and private; for those who do good are the truly great, in the language of heaven and the Gospel, as our Lord says: 'whosoever therefore shall break one of these least commandments shall be called least in the kingdom of heaven, but whosoever shall do and teach them, he shall be called great in the kingdom of heaven' (Matt. 5: 19). It would be a great mockery if the grandees of this world were small fry in the next, having done nothing better than play at being kings and grandees in farce. Please God it be not so.

I have seen a letter from the battlefield which said that Antonio de Leiva died 'with more repute as a knight and general than as a Christian'. Unless I am mistaken, it seems he did not even make his last confession. Lord have mercy on him, and on us all, for we all have need of it, and He alone knows the secret of whose acts are good and whose are not. According to the letter, Leiva must have gone into the other world with much lamenting at the thought that there, perhaps, he would be a private instead of a general. It is too late to worry about such things on one's deathbed. St John the Baptist did not tell the soldiers who asked him 'what they should do to go to heaven' to give up their profession, but said: 'Do violence to no man, neither exact anything wrongfully, and be content with your wages' (Luke 3: 14). Yet few soldiers keep this rule! On the contrary, they consider it an act of courage to show even

10. Empress Isabel of Portugal was regent of Spain in Charles V's absence.

greater bravado to their own countrymen and friends than to the enemy. Some of this might apply to lords with their vassals; St John's rule is just as pertinent to them. God gave them ample wealth to spend without harming any man, and does not order them to give up any of their rights; but where there is any doubt, as Aristotle said, 'it is better to suffer injury than to inflict it' (*Nicomachean Ethics* 1138^a29-36).

Don Juan is well, praised be the Lord. The Bachelor has been very ill with the stone, but is now out of danger. Our Lord always guard Your Lordship's life, and prosper your illustrious estate in His service.

Your illustrious Lordship's chaplain and humble servant,

Fray Francisco de Vitoria.

**Letter 4: To Pedro Fernández de Velasco
Salamanca, 19 November [1536]**

Vitoria gives his views on the Franco-Spanish wars.

Most illustrious lord,

I can find little here to write about to Your Lordship, since all our own news is from abroad. Please God the good continue to be true, and the rest false. At any rate, the Lord grant that the latest report we have received about His Majesty's return be correct, and may his coming benefit not only these realms of his, but the whole of Christendom in its hour of peril.¹¹

It is well known how little princes are given to taking anyone's advice, especially if it goes against their own inclinations; but if anyone has His Majesty's ear it is Your Lordship, for many reasons. I sometimes think how very foolish it is for one of my kind to think, let alone to speak, about government and public affairs; it seems to me even more absurd than a grandee pronouncing on our philosophies. But when I reflect that those who govern our affairs are men of flesh and blood like us, and that there may be men just as wise outside the government as in it, I cannot hold it any great folly to suppose they sometimes get things wrong.

This whole affair is crooked, but if I could find a way to effect a meeting between His Majesty and the king of France in my view it would be a

11. Charles V embarked at Genoa on 17 November for his return to Spain after the abortive invasion of Provence in July–September 1536, and landed at Barcelona on 5 December. For a detailed account of the background see Vitoria 1981: 34–52.

much greater achievement than the battle of Tunis.¹² At this moment there is no favour I would rather ask of God, than that He should make these two princes as truly brothers in spirit as they are in blood.¹³ If this could happen, there would be no more heretics in the Church, no more Moors than they wanted, and the Church would be reformed whether or no the pope wanted it. Until I see that day I shall not give twopence for all the councils, remedies, and projects ever thought of.¹⁴

The fault cannot lie with the king of France, much less with the emperor; it must be the collective sins of all which are to blame. Wars were not invented for the good of princes, but peoples. If this is true, as it is, then tell me, good men all: are our wars for the good of Spain, or France, or Italy, or Germany? Or are they for their universal destruction, and the increase of Moordom and heresy? Let them protest our innocence as much as they like. God forgive our princes and all who put them up to this – but He will *not* forgive.

But why do I write as if this was news to Your Lordship, who must have seen all this better than anybody? The trouble is that everyone can see it except the princes themselves.

Don Juan is making good progress. He is diligent and dutiful, a sure sign of a good heart. He has been a little ill with a cold; but is free of it now because I took pains to free him from the clutches of his doctors. Our Lord always guard Your Lordship's life, and prosper your illustrious estate in His service.

Your illustrious Lordship's chaplain and humble servant,

Fray Francisco de Vitoria
Salamanca, 19 November

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12. Charles V's expedition in defence of the Spanish empire in North Africa against the Barbary pirates led by the Turkish corsair Barbarossa, which culminated in the recapture of Tunis on 20 June 1535, was hailed as one of the greatest feats of his reign, although the victory was soon proved ineffective (Elliott 1970: 54-5).
 13. By the Treaty of Cambrai (1529), François I of France had married Charles V's elder sister Leonor of Austria.
 14. In April 1536 Charles V had agreed with Pope Paul III to call a General Council, to be held in Mantua the following year. It did not take place.

APPENDIX B

LECTURE ON THE EVANGELIZATION OF UNBELIEVERS

(*Lectio reportata in ST II-II. 10. 8*)

This extract from Vitoria's lectiones of 1534-5 on ST II-II. 10 'On unbelief in general' shows the development of Vitoria's political ideas in connexion with the problem of evangelization in the two years leading up to the composition of the relections on the 'barbarians'. His lectures on this quaestio make it clear that Vitoria was led to consider the topic as much by the problem of the moriscos and conversos (Moslem and Jewish converts in Spain) as by the American conquests. On the American Indians began as a re-reading of Article 12 'Whether it is lawful to baptize the children of non-Christians against the wishes of their parents'. The lectio translated here is on the more interesting Article 8. For convenience it has been divided into five sections (§§).

Reportata of the 1534-5 course survive in a number of MSS.¹ As if to prove the connexion with the Indian question, the anonymous Madrid Biblioteca de Palacio MS from which the following extract is taken includes, between Vitoria's lectures on II-II. 10. 8 and 9 (fols. 65^v-75^v), a copy of a relection On the Caribbean Indians (De insulanis) by Father Domingo de las Cuevas, OP, Minor Professor of Thomist Theology in the university of Alcalá. In it, Cuevas quotes Vitoria's ideas on the 'affair of the Indies' as ammunition against a relection De Indis of another Alcalá professor, Father Domingo de Santa Cruz, OP.²

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1. The most complete are Francisco Trigo's, preserved in the 696 folios of Salamanca, Biblioteca Universitaria MS 43 (edited in Vitoria 1932-52). A further six MSS of *reportata* are described in Beltrán de Heredia 1928: 72-97, §13-19, where the present extract is also edited, Apéndice 11, pp. 196-202.
 2. Beltrán dates Las Cuevas' *De insulanis* to 1544-8, and Santa Cruz's *De Indis* to 1536-9; the texts (edited in Vitoria 1967: 196-218) demonstrate the interest which the 'affair of the Indies' attracted at this time, particularly among Dominicans.

Summa Theologica II-II. 10. 8
Should unbelievers be forcibly converted?

§1 AQUINAS REPLIES by establishing a preliminary distinction, namely that the unbelievers in question are *those who have never taken the faith*. These *should not be forcibly converted*; but a second conclusion is that they may be *forcibly restrained from hindering the missionaries of the faith*, and from insulting Christ and Christians; this is clear, because everyone has the right to defend himself and his temporal interests, and therefore also his spiritual interests. And his third conclusion is that those who have received the faith may be forced back to the faith; see the explicit testimonies he adduces.

The first conclusion is the determination of the decretal *Maiores* (X. 3. 42. 3) and the canon *De Iudaeis* (*Decretum* D.45. 5), on the Jews; and of the decretal *Sicut ait* (X. 5. 7. 8) and the canon *Qui sincera* (*Decretum* D.45. 3), on heretics. And this is the common opinion of the doctors on Lombard's *Sentences* IV. 4, of Durandus of St-Pourçain, *ad loc.* §6, and Richard of Middleton, in IV. 6. 3.

A DOUBT ARISES by what law it is prohibited to forcibly convert unbelievers? To harm another is prohibited by natural law; but to force these people to believe is not to harm them, but to help them; *ergo*. The reply is that it is prohibited in many passages of human law; therefore this is no objection, because positive law cannot forbid anything unless it is prohibited in divine law. I conclude that it is prohibited in divine law.

A DOUBT THEN ARISES as to where this prohibition is to be found? Not in Scripture, because if it was there St Thomas would have cited it among his authorities, being always a most careful researcher in this respect. I reply that there are no unequivocal authorities to this effect, but that there are some passages from which it may be inferred, though not clearly, at least by deduction. This is as much as to say, it comes not from positive divine law but from natural law; and the arguments for proving it depend on natural reason. But whereas Duns Scotus holds that a convincing argument from reason can be made against the conclusion (in *Sentences* IV. 4. 9), Durandus of St-Pourçain, in the passage cited above, constructs a rational argument for the conclusion. I do not know whether it is valid; judge for yourselves, since it is clear enough. Thomist theologians also advance the following proof for the conclusion:

evil means are not justified even by good ends. But to apply coercion to anyone is evil; therefore unbelievers cannot lawfully be compelled to believe. This argument, however, perhaps involves a *petitio principii*.

ON THIS BASIS, one could construct an *a posteriori* proof of St Thomas' conclusion: namely, that *more harm than good follows from forcible conversion, which is therefore unlawful*:

1. In the first place, forcible conversion would cause great provocation and unrest (*scandalum*) amongst the heathen. If, for example, all the Saracens in Spain were to be forcibly converted,³ this would cause unrest in Africa, because the Africans would think that Christianity had always been preached and imposed by force throughout the world; whereas, on the contrary, our strongest argument against them is that they have never conquered any land with their faith, as we have with ours. *Ergo*.

2. The second bad effect is that, instead of the benevolent and proper affection required for belief, forcible conversion would generate immense hate in them, and that in turn would give rise to pretence and hypocrisy. We could never be sure whether or not they truly believed in their hearts; there would be nothing to move them to have faith, only intimidation and threats. Their conversion would be empty and ineffective. Again, as Richard of Middleton says, no one can believe unless he wills; but the will cannot be compelled, *ergo*. Besides, licence to compel men in this way would be harmful, because if anyone could forcibly convert men to their own religion, the more powerful would drag many more into following their own evil heresies.

§2 NEVERTHELESS, Duns Scotus, in the passage cited above, holds that the opposing argument is, if not true, at least more probable; that is, that *if precautions are taken to ensure that these evil and undesirable consequences are avoided, a prince may forcibly convert pagans who live in his own kingdom*:

1. His proof begins with the canon *De iudeis* (*Decretum* D.45. 5), which praises Sisebut, king of the Visigoths in Spain, for his decree ordering the conversion of all Jews. This edict was later revoked by the

3. Vitoria's use of the conditional tense is interesting. In 1502 the Spanish crown had issued a pragmatic ordering the expulsion of all unconverted Muslims from the kingdom (see the Glossary, s.v. *moriscos*). At the time when Vitoria was writing, therefore, the crown could insist that technically 'the conversions had not been achieved by force, since the Moors had been allowed the option of emigration', though 'even the most zealous Spaniards had to admit that the conversions left a good deal to be desired' (Elliott 1970: 52). Vitoria returns to the question of expulsion as an alternative to conversion below (§4).

Council of Toledo (*Concilium IV Toletanum* canon 57), but the words of the canon call Sisebut 'most pious prince', and remark that the edict 'would not have been revoked were it not for the undesirable consequences'. *Ergo*, such a decree is lawful.

2. Consequently, assuming for the sake of the argument that such an enactment is properly promulgated and published, all are obliged to believe in Christ, and they commit a sin if they refuse to accept the Christian religion.

3. The prince is empowered to punish and coerce those who commit this sin, just as he is for any other sin; further, by thus coercing them the prince does not harm them, but benefits them; therefore he can coerce them.

4. 'Ignorance makes an act involuntary', as is clear from Aristotle's *Nicomachean Ethics* 1110^b17–24;⁴ hence there is no injury (*iniuria*) to our Saracen because he *would* accept Christianity if he knew it was better, but in fact he is ignorant of the faith. Hence his conversion is not involuntary; formally it may be so, but effectively it is voluntary. In the same way, in giving a medicine to a patient who does not know that it is good for him the doctor does no injury (*iniuria*) to the sick man; the latter takes the medicine without formally wishing to do so, to be sure, but in effect he does so willingly.

5. Again, if someone wished to commit suicide, I should be obliged to prevent him from doing so if I could by confiscating his weapons; I am therefore all the more obliged to prevent him from committing spiritual suicide.

6. Furthermore, the commonwealth has the authority to enact laws not only in civil matters, but also in matters of religion; this is part of natural law. Hence every Christian commonwealth has this power to use forcible conversion; *ergo*, any Christian king or commonwealth may lawfully compel their subjects to accept the Christian faith.

7. Their own priests have the power by natural law to instruct them and enact laws in religious matters, and their subjects are bound to obey them under pain of mortal sin, if the law is good. Hence a Christian prince may also compel his own subjects to accept his faith.

4. Vitoria's following distinction between *effectively* and *formally* involuntary acts is a scholastic way of expressing Aristotle's distinction between *ouk hekousion* and *akousion*: 'Everything that is done by reason of ignorance is non-voluntary; it is only what produces pain and regret that is involuntary. For the man who has done something owing to ignorance, and feels not the least vexation at his action, has not acted voluntarily, since he did not know what he was doing, nor yet involuntarily, since he is not pained. Of people, then, who act by reason of ignorance he who regrets is thought an involuntary agent, and the man who does not regret may be called a non-voluntary agent' (*loc. cit.*).

From all this Gabriel Biel accepts Scotus' opinion as probable, and goes no further than that (in *Sentences* IV. 6).

BUT ON THE OTHER HAND we must reply to this question by going back to our distinction. Some unbelievers are subjects of Christian princes, such as the Saracens who have settled in Spain; but *others are not subjects*.

I REPLY by asserting, first, that to compel those who are subjects is not intrinsically evil, like perjuring an oath; that is, it is not so evil that it cannot sometimes be a good deed. 'It is evil,' as St Thomas says, 'but not so evil that it can never be good'; the proof being that it is not by definition so evil as to involve an inevitable breach of charity towards God or one's neighbour. It is not contrary to God's interest; indeed, it is clearly a great advancement of the Christian religion. Nor is it against our neighbour's interest, since it is to his benefit. The confirmation is that when we say something is 'lawful', we are not obliged to prove the assertion until contrary proof is offered that it is harmful, according to the decretals *Sicut noxius* (X. 2. 23. 1, and X. 1. 12. 1). In the question under consideration, forcible conversion is in itself lawful, or at least not unlawful, and I am therefore not bound to prove that it is lawful.

Second, I assert that Christian princes have the authority to compel their subjects to believe; that is, if it be lawful to compel unbelievers. Christian princes may compel their own subjects not only in civil matters but also in religious ones; the commonwealth holds both civil and religious authority over its own subjects by natural law, and the prince has the same authority as the commonwealth over his subjects, be they pagans or not. Therefore, that the prince may not so compel them must be due not to a lack of power, but to the expediency or otherwise of the policy.

Third, I agree with St Thomas that forcible conversion is evil. This is clear from the proof of the reply to the second argument, in the canon *De Iudaeis* (*Decretum* D.45. 5).

Fourth, I assert that even if it is not evil *per se*, it is evil because of the evil consequences which it entrains. The proof that it is evil *per se* is that if faith must be received voluntarily, no one can receive it by coercion. And the undesirable consequences mentioned above need no further comment. They are confirmed by experience; we see that Saracens never become Christians; no indeed, *tan moros son agora como antes*.⁵

5. That is, 'they are as much Moors as ever they were'. Vitoria occasionally broke into Spanish in this way (in contravention of the university statutes which he himself had helped to draft) when he wished to make a humorous or emotional point.

Fifth, if all the evils and undesirable consequences are tolerable, Scotus' opinion is tenable. And this is what Scotus means when he says 'if precautions are taken to ensure that evil and undesirable consequences are avoided'. To do so, however, is difficult. Nevertheless, if the consequences can be avoided, it will be lawful to use forcible conversion, as Scotus says. The confirmation is to be found in St Thomas, *ST* I-II. 92. 1, where he enquires what is the purpose of civil, that is royal, power, and replies that it is not only to preserve peace and good neighbourliness, but also to make the citizens good and happy.⁶ But no one can be good unless he is a Christian and accepts our faith; *ergo*. This is further confirmed by the fact that, from the standpoint of natural law, a prince or commonwealth is empowered to use coercion on them; hence a Christian prince to whom they are subject [may use coercion to convert them].

Sixth, I affirm that St Thomas' reply is more convincing than Scotus', because he addresses the general question and the most usual circumstances, even though a different consequence may sometimes come about by particular circumstances (*per accidens*). The rule which Scotus sets up against St Thomas is, if you like, the exception to St Thomas' rule. This is confirmed by the traditional custom of the Church; the primitive Church in the times of Augustine and Jerome not only did not use coercion, but even refused to grant immediate acceptance to those catechumens who came to the faith of their own accord, making them wait so that they would later be constant in the faith. This is how it should be done.

TO THE FIRST, concerning Duns Scotus argument concerning King Sisebut, I reply that the king is praised for his zeal and piety, but not for the deed itself, which indeed earned him a rebuke for breaking the strict prohibition against any forcible baptism of unbelievers. And the text of the canon also adduces the argument that God 'hath mercy on whom he will have mercy, and whom he will he hardeneth' (Rom. 9: 18), for faith is a gift from God. All the same, Sisebut was a most pious king; and was perhaps counselled by his bishops to use force in that way.

TO THE SECOND, even granting that they are obliged to receive the faith, this argument implies only that forcible baptism is lawful, and hence that if there are no undesirable consequences they may be coerced. But this does not contradict St Thomas.

TO THE THIRD we may reply in the same way. In addition, I assert that an injustice (*iniuria*) is done them, because their liberty is taken away. If

6. Compare *On Law* §122 bis.

a king were to force someone to take a rich and beautiful woman to wife, even a princess, although he might be obliged to marry her and might even find it hard to make a better match, he would nevertheless be wronged if he was coerced.

TO THE FOURTH, that those who are unwilling through ignorance are not in effect being coerced at all, the reply is that this argument proves only that forcible baptism would be lawful if there were no undesirable consequences; but that is all. In addition, I assert that a wrong is done to them, and that they are indeed acting under compulsion 'formally speaking' – just like the man who is compelled to marry a wife who is good, but of whom he himself is invincibly ignorant.

TO THE FIFTH I reply that it remains dangerous to coerce anyone in matters of religion, however advisable it may be in other cases. Therefore the analogy is invalid.

TO THE SIXTH I concede the premiss entirely; but only so long as no undesirable consequences or other evils ensue.

TO THE SEVENTH I reply that Saracen priests have their authority to coerce their subjects because the Saracens themselves have given them the power to teach them in matters of religion. Hence they would commit a sin not merely by refusing to listen to their teaching, but even by not obeying it. In the same way, if the majority of their commonwealth were to accept the Christian faith, the minority who refused to accept it could be compelled to do so by the majority, so long as the faith was sufficiently preached.

THIS CONCLUDES WHAT I HAVE TO SAY about unbelievers who are subjects.

§3 IT MAY BE ASKED, however, regarding the other kind who are not subjects, *whether Christian princes can convert them by violence and the sword, if no scandal or undesirable consequences ensue?* The reply is that they cannot, because the king of Spain has no greater power over them than I do over my fellow citizens; but I cannot compel a fellow citizen to hear mass; *ergo*.⁷

A DOUBT ARISES whether, given that these unbelievers cannot be compelled to keep the Christian law in this way, *whether they can be compelled to keep the law of nature, which is common to all?* Some reply that they can; that our king can compel these barbarians to keep the law of nature just as I can compel someone not to commit suicide. They prove this by saying that all men profess the law of nature; and, as St

7. It is immediately clear from the reference to the king of Spain that, though he does not say so, Vitoria is thinking specifically of the American Indians. This is confirmed by his use of the terms *barbari* and *insulani* in the following paragraphs.

Thomas puts it, 'whoever accepts the law of Christ can be compelled to keep it'.

The reply to this is that there are some sins against nature which are harmful to our neighbours, such as cannibalism or euthanasia of the old and senile, which is practised in Terra Firma;⁸ and since the defence of our neighbours is the rightful concern of each of us, even for private persons and even if it involves shedding blood, it is beyond doubt that any Christian prince can compel them not to do these things. By this title alone the emperor is empowered to coerce the Caribbean Indians (*insulani*).

Second, I assert that princes can compel unbelievers who are their temporal subjects to abandon their sins against the commonwealth, because they are subject in temporal matters to their kings. And since the emperor is empowered to make laws for the utility of the commonwealth, if there are any sins against the temporal and human good of the commonwealth he can compel them to abandon them.

Third, I assert that the faithful cannot compel unbelievers to keep an obvious law of nature, unless it is necessary for the good and peace of the Christian commonwealth, or unless its breach harms a neighbour in the way I have explained. This I think is most certain. Nor do they have any right to act against the infidels solely on the grounds that the latter do not observe the law of nature. If they did have such a right, a Christian king could also compel them to abandon their idols, and that would mean leaving them without any law. That is false; *ergo*.

A DOUBT ARISES whether it is lawful to smash down the idols of these barbarians, once the faith has been preached to them and they have refused to accept it? It seems that it is lawful, because it does them no harm or wrong. The reply is that it is not evil *per se* to do so, being against neither the honour of God nor the good of a neighbour, since it does not harm them. But I say that this ought not to be done on every occasion, primarily because it may provoke their fierce indignation, and destroy any kind feelings towards us which they may happen to have. Among peoples where the majority have been converted, however, or where it is to be hoped they may be converted by such actions, it will be quite lawful. I say the same of their temples; they should not be thrown down, because this is an injury (*iniuria*) to their rights, and because even after they are thrown down, they will rebuild them.

8. Vitoria's phrase *in terra continenti* evidently refers to the South American mainland as opposed to the Caribbean islands (see the Glossary, s.v. *Terra firma*).

§4 A FURTHER DOUBT ARISES whether unbelievers may at least be indirectly coerced, for instance by taxes and levies by which they may be encouraged to become converts to the faith? The compiler of the *Decretales Gregorii IX*, Raymond of Peñafort, wrote elsewhere (*Summa de poenitentia*) that this would be laudable if it were customary, but that it ought not to be introduced as a novelty because of the provocation it would cause, which we ought always to avoid for fear of giving 'occasion of stumbling', as Paul makes clear in 1 Cor. 10: 23–33 and 2 Cor. 6: 3. Therefore it would be a good thing only if laws were passed on this matter; and he cites the canon *Non debet* (*Decretum* C.11. 3. 64). From this I deduce that Raymond's decision was that it ought not to be done.⁹

IN THIS REGARD, it should be noted that 'taxes (*tributum*) and levies (*exactio*)' are of two kinds. One kind may justly be imposed on unbelievers even without their being converted to the faith, such as tributes appropriate to the time and place raised at the outbreak of war, which even unbelievers can understand to be just; the proof is that such tributes could be imposed on them even if they were Christians, and may therefore be imposed on them while they are still unbelievers (I am talking, of course, of unbelievers who live in Christian lands and are subjects of Christian princes). Indeed, they may be required to pay tributes from which Christians are exempted, so long as their fiscal burden is moderate and not increased by the fact that Christians are exempted.

Second, I assert that if the tribute is unjust and immoderate, it cannot be demanded of them. From this it follows that the king can justly order the expulsion of the Saracens from our country if they pose a probable threat of subverting the faithful or overturning the homeland.¹⁰ He may legitimately do this because, even if he knows that it may cause them to be converted to the faith, they are not thereby forced to convert. He could not do it, perhaps, with the actual intention of using the fear of exile, which affects even the most strong-minded of men, to effect their conversion; but, as long as that intention is absent, he is empowered to use his rights, whatever the consequences. If he cannot exercise direct compulsion over them, he can make a law ordering the exile from his kingdom of anyone who refuses to become a Christian. That this is

9. Financial incentives to conversion had in fact been practised in Spain since King Egica's decree of 693 (*Concilium XVI Toletanum* canon 1), by which converts were freed from the royal taxes payable by Jews, while the fiscal obligations of the latter were increased by the amount formerly paid by the converts. The canon *Non debet*, however, states that no man should be penalized who has not previously been properly convicted of breaking a law.

10. Compare §1, footnote 3 above, and see the Glossary, s.v. *moriscos*.

lawful is proved by the fact that in other matters where compulsion is unlawful, he may employ the same device. For instance, the law states that any Saracen who sleeps with a Christian woman is punishable by death. If one were caught doing so, the king is empowered to put him to death, whether he sticks to his perfidious creed or whether he becomes a Christian; but he also has the power to pardon him from the death penalty if he is willing to become a Christian, even though his conversion would have come about under fear of death. This would be perfectly fair, because the king would be using his rights.

But as for tributes which cannot also be demanded of the faithful, I assert that they cannot be demanded of unbelievers with the intention of making them convert. Unbelievers cannot be deprived of their goods on the grounds of their unbelief, any more than other Christians, because they possess true right of ownership (*dominium rerum*) over their own property. By the same token, it is clear that they cannot be burdened with greater fiscal obligations than are lawful in the case of the faithful. In saying this, I mean that such impositions are unlawful *per se*, that is in the absence of any additional cause, such as a crime perpetrated by the unbelievers, or some previous pact; because if Saracens, Jews, or other unbelievers who, either through some criminal action of their own or by the law of war, were in a position to be killed or despoiled of their goods, were to be burdened by heavier taxes than the Christian part of the population, this would not be unjust. For example, if the Saracens were to petition for the right to live among us Christians on the agreement that they pay double tribute, no wrong would be done them if we were then to demand such tribute. Therefore, such exactions could justly be levied upon them by our princes for that purpose.

For that purpose, yes; but could they impose heavier taxes on them to force them to convert? This is still in doubt, since we agree that it is not lawful to use fear and violence to convert them. For myself, I have little doubt that more of them could be converted by greater leniency; and they would be likely to remain firmer in the faith. See St Thomas' *Opusculum XXI ad ducissam Brabantiae*, where he explains all this; how the prince may impose heavier taxes on them than on Christians, but not excessive ones, and many other useful remarks on the subject.

§5 IT IS ARGUED, nevertheless, that they can be directly compelled, because St Thomas says that they can be compelled *for blasphemy*. But all unbelievers blaspheme continually; therefore it is always lawful to compel them, because they hinder our faith with their blasphemies.

The reply is that unbelievers may blaspheme in two ways. The first is if their blasphemies are an injury (*iniuria*) or impediment to Christians,

for instance if they were to send us a letter full of blasphemies. In this case we may set aside any question of faith; we may go to war against them solely on the grounds that they have done us injury (*iniuria*). But if they keep their blasphemies to themselves, we cannot use this alone as grounds for declaring war against them. We are well aware that both Jews and heathens blaspheme the name of Christ among themselves, but we cannot for this reason alone go to war with them.

A DOUBT ARISES whether princes may lawfully coerce them with threats and intimidation? It seems that they can, because Christ forced Paul to believe by casting him to the ground and blinding him (Acts 9: 3–9); therefore the same can be done to unbelievers. The reply is that it is not lawful for all of us to do everything which God is permitted to do, because we are not the masters of mankind as Christ is. Hence Christ could coerce not only Paul, but the whole world, and He could have left this power to the Church; but He did not. Second, I reply that if it were in our power to move hearts, as Christ could, then it would be lawful for us to behave in this way; but He made Paul believe, not by intimidation, but by divine inspiration. It is clear from this that masters, contrary to their own belief, do not have the power to put their infidel servants to death, nor to inflict unjust punishments on them. It is lawful, on the other hand, to give preferential treatment to those of their slaves who are Christians, as opposed to those who are not, as Nicolaus de Tudeschis says of the Jews in his commentary on the decretal *Novit* (X. 2. 1. 13), where he also holds that unbelievers can be compelled to observe the whole of natural law, because they can be restrained from committing homicide, and also from usury, as stated in the decretal *Usurarium* (Sext 5. 5. 1). But it will not always be lawful to compel them in every matter to do with natural law; they cannot be forcibly compelled to abandon polygamy, for example, or other such practices. In fact, Nicolaus de Tudeschis' examples only serve to prove what I have already said, namely that they can be forced not to upset the commonwealth, and not to harm their Christians neighbours.

A FINAL DOUBT ARISES whether unbelievers who have not themselves received the faith, but whose parents were converts who have since apostatized, can be forcibly baptized?¹¹ In other words, can someone who is not baptized but whose father was baptized be compelled to accept baptism? The question is raised by Pierre de la Palu in his commentary on Lombard's *Sentences* IV. 4. 4. He comes to no firm decision, but

11. Once again, Vitoria probably has a specific contemporary problem in mind, that of the *conversos* (see the Glossary, s.v.), whose supposed backslidings were to provide the Spanish Inquisition with its *raison d'être* for centuries to come. It has been suggested that Vitoria himself was descended from *conversos*.

seems to be saying that they can be compelled because the Church has the right to enforce baptism on the children of Christians even against their own or their parents' will, and there is no apparent reason why it should have lost this right in the present case; therefore the Church can use compulsion. I believe that in this case they should indeed be compelled. But against this, it would follow that the Christians can compel Saracens any of whose forefathers were baptized. For example, let us suppose for the argument that the present day Saracens are separated from these forefathers by ten generations; the argument then runs that the Church had the right to baptize the children of their forefather nine generations back, and hence the children of their forefather eight generations back, and so on down to the present generation; *ergo*. In reply, one may say that if it could be established beyond doubt that these Saracens were the distant descendants of Christians, and if they could be forcibly converted without provocation, then it ought to be done. But the Church does not do so, because it cannot be established, and also because of the inevitable unrest which would ensue.

Biographical notes

Only figures of substantial interest are included; names alluded to merely in passing are omitted here (in which case brief details are provided under their entry in the Index). Names are listed under their commonest English form; alternative styles, baptismal names, and standard contemporary Latin titles and styles are given in brackets, the form used by Vitoria being printed in italics. The entries are not exhaustive, aiming only to give information relevant to understanding Vitoria's text; cross-references are marked with an asterisk. Fuller coverage and suggestions for further reading can be found, for most of the figures listed, in the Oxford Dictionary of the Christian Church, the Oxford Classical Dictionary, the Oxford Dictionary of Popes, and the Cambridge History of Later Medieval Philosophy.

AARON. Aaron the Levite was appointed high priest by Moses (Exod. 28–9, Num. 8, 18); in the Epistle to Hebrews St Paul takes 'the succession of Aaron' as a symbol of the Judaic priesthood or Old Law which is to be replaced by Christ's priesthood 'after the order of *Melchizedek' or New Law.

ABEL. Murdered by his jealous brother Cain because his sacrifice was acceptable to God whereas Cain's was rejected (Gen. 4), Abel was taken by Christian exegetes as the first of the martyrs, and hence as a type of Christ (Heb. 11: 4).

ACCURSIUS (*Glossator*, d. 1263). The greatest of the Bolognese glossators, compiler of the *Glossa ordinaria* or *magna* of more than 96,000 glosses on the Justinian corpus (see Glossary, *Corpus iuris civilis*).

ALMAIN, JACQUES (ca. 1480–1515). Parisian professor of theology and author of a number of works on conciliarism and papal claims to supremacy (*Libellus de auctoritate ecclesiae*, *Quaestio de dominio naturali civili et ecclesiastico*; see F. Oakley, 'Almain and Major: Conciliar Theory on

the Eve of the Reformation', *American Historical Review* 70 (1965): 673–90). In his commentary on the fourth book of *Peter Lombard's *Sentences*, Almain held that *dominium* does not depend on grace.

AMBROSE, ST (ca. 339–97), bishop of Milan and one of the four doctors of the Latin Church. Author of numerous apologetic treatises, sermons, letters, and an ethical treatise *De officiis ministrorum*.

ANTONINO OF FLORENCE, ST, OP (*Archiepiscopus*, 1389–1459). Reformer, founder of the convent of San Marco in Florence (1436), and archbishop of that city from 1446, Antonino was canonized in 1523 at the instigation of Pope *Hadrian VI. Author of a *Summa theologica moralis* which Vitoria edited for the press in Paris (1521), Antonino also wrote a *Chronicle of the World* and numerous miscellaneous treatises, including important contributions to scholastic economic theory. He was a strong supporter of papal universal monarchy.

AQUINAS, ST THOMAS, OP (Doctor angelicus, ca. 1225–74). Aquinas' synthesis of Christian theology with Aristotelian philosophy (Thomism) made him the most influential thinker of the Middle Ages. His major theological work was the *ST*, but he also wrote a *Summa contra gentiles* (1259–64) and numerous other works. Aquinas' most important works of political theory were his commentaries on *Peter Lombard's *Sentences* (1254–6) and *Aristotle's *Politics* (1268–72, to the beginning of Bk III only), and the *De regimine principum* (ca. 1266, unfinished, completed by Ptolemy of Lucca ca. 1303). Aquinas accepted *Aristotle's concept of the *natural* state, but 'the greatest breakthrough in his doctrine lay in his operating with the concept of nature as a . . . divine creation: "Grace does not do away with nature but perfects it" ' (Ullmann 1975: 272). St Thomas' works were officially adopted by the Dominican Order in 1278.

ARCOS, MIGUEL DE, OP (fl. 1530–50), Provincial of Andalusia. Little is known of Arcos, except that he was the author of a refutation of the bishop of Michoacán Vasco de Quiroga's *De bellandis Indis* in ca. 1550; see Agustín Millares Carlo & Lewis Hanke (eds.), *Cuerpo de documentos del siglo XVI sobre los derechos de España en las Indias y las Filipinas* (México: Fondo de Cultura Económica, 1943), pp. 3–9.

ARISTOTLE (384–322 BC). His *Politics* were translated into Latin by William of Moerbeke OP (ca. 1250), and taken into the mainstream of scholastic thought by the commentaries of *Aquinas, Walter Burleigh,

*Buridan (Ullmann 1975: 284, with bibliography; Skinner 1978: I. 49–52). 'The cosmological revolution which the absorption of Aristotle wrought in the thirteenth century displayed its greatest effects in the sphere of governmental science . . . his concept of the state as a body of citizens sufficing for the purposes of life [that is, arising from the laws of nature, not divine grace] seems innocuous enough, but nevertheless introduced new dimensions into thought' (Ullmann 1975: 269).

AUGUSTINE, ST (354–430), bishop of Hippo and one of the four doctors of the Latin Church. The most influential of the Fathers, his view of the universal character of the Church as a body corporate left 'no room for an independent, self-sufficient state' (Ullmann 1975: 231–2); Augustinianism is therefore often considered the antithesis of Aristotelianism and dualism in political theory: see M. Wilks, *The Problem of Sovereignty in the Later Middle Ages: The Papal Monarchy with Augustinus Triumphus and the Publicists* (Cambridge: Cambridge University Press, 1963), pp. 84–117. Augustine was also the founder of the medieval theory of the Just War (Barnes 1982).

BARTOLUS OF SASSOFERRATO (1314–57). The foremost civil jurist of the Middle Ages and founder of the school of 'Post-Glossators' (cf. *Accursius), Bartolus' opinions had the force of law in Spain and Portugal. His importance for political thought was his juristic demonstration of the sovereignty of city-states in their struggle for liberty against the emperor, expressed in the dictum *ciuitas sibi princeps* (Skinner 1978: I. 9–12), 'a mighty step forward in the view of the law-creative capability of the people' (Ullmann 1975: 108–10).

BELLARMINE, Cardinal ROBERT, SJ (1542–1621). Jesuit theologian who became one of the major Catholic apologists of the Counter-Reformation, Bellarmine held that the papacy had only an indirect power in temporal matters – a view which delayed the process of his canonization for more than three centuries.

BERNARD OF CLAIRVAUX, ST (1091–1153). His *De consideratione*, addressed to his former pupil Pope Eugenius III on his elevation to the papacy in 1153, was a treatise on the conduct of the papal office which castigated simony and wealth (Tierney 1988: 88, 92–4); it provided many much-quoted passages on the Swords, the Keys, etc.

BIEL, GABRIEL (Doctor profundissimus, 1410–95). Member of the Brethren of the Common Life, nominalist follower of *Ockham and

founder of the university of Tübingen, where he held the chair of *uia moderna* theology. Biel's ideas were influential on later Lutheranism (Oberman 1981); Vitoria once described him in a lecture as a *neotericus* or 'modernist (heretic)' (see *II On the Power of the Church* 2. 1, p. 126 footnote 20). Paradoxically, however, Biel's commentary on *Peter Lombard's *Sentences* was to replace *Durandus of St-Pourçain as the set text in the nominalist faculties of Spanish universities after 1545.

BONAVENTURE, ST, OFM (Doctor seraphicus, 1221–74). In his theological works such as his extensive commentary on *Peter Lombard's *Sentences*, Bonaventure resisted the Aristotelian tendency in thirteenth-century scholasticism, remaining within the Augustinian tradition.

BONIFACE VIII (pope 1294–1303). In his contests with Philip IV the Fair of France, 'the first medieval conflict of church and state which can properly be described as a dispute over national sovereignty' (Tierney 1988: 172), Boniface enunciated an extreme hierocratic doctrine of papal plenitude of power and supremacy over princes, summed up in the celebrated – and highly enigmatic – bull *Unam sanctam* (see the Glossary, s.v.) which defended the jurisdiction of the see of St Peter over all creatures with a barrage of authorities (Tierney 1988: 172–92).

BURIDAN, JOHN (1300–58). Parisian theologian and Aristotelian, pupil of *Ockham, and author of an important commentary on *Aristotle's *Politics* (published in Paris, 1513).

CAJETAN, Cardinal, OP (Tommaso de Vio, *Caietanus*, 1469–1534), General of the Dominican Order (1508–18) and bishop of Gaeta (1519). His commentary on *Aquinas' *ST* marked the beginning of the revival of Thomism.

CANO, MELCHOR, OP (1509–60). Dominican theologian, pupil of Vitoria and Spanish delegate to the Council of Trent. His *De locis theologicis*, which introduced historical analysis into theological speculation, was the most innovative, and influential, theological work of the period.

CARLETTI DA CHIVASSO, ANGELO, OFM (ca. 1400–95). Author of *Summa angelica* (Chivasso, 1486), a handbook of theological and canonical definitions arranged alphabetically.

CHARLES V, Emperor, and I of Spain (1500–58, king of Castile and Aragon 1516, emperor 1519–56).

CHRYSTOSTOM, ST JOHN (ca. 344 – 407), Patriarch of Constantinople and Father of the Greek Church. His *Homilies* on Gen., Matt., John, and the Pauline epistles placed him in the forefront of Christian expositors of the Bible; he propounded the literal and spiritual ways of exegesis, being opposed to allegorical interpretation.

CICERO, MARCUS TULLIUS (106 – 43 BC), Roman statesman and moral philosopher. Cicero was an eclectic and somewhat unsystematic thinker, but his blend of Stoic and Academic ideas with a robustly practical approach to ethical and political questions, and above all his incomparable literary style, made him by far the most influential ancient writer in the Renaissance, especially among the humanists.

CLEMENT I (pope ca. 91 – ca. 101). The legend embodied in the spurious *Epistola Clementis* (ca. 400), that Clement of Rome (now reckoned fourth pope in succession after Peter) was personally consecrated by Peter as his immediate successor (see the Glossary, s.v. *traditio*), is attested as early as *Tertullian (ca. 160 – ca. 225) and *Jerome (331 – 420). Writers of the third and fourth centuries already equated him with the 'Clement' mentioned as a fellow-worker of St Paul in Phil. 4: 3.

CLICHTHOVE, JOSSE (*Judocus Clitouaeus*, 1472 – 1543). Flemish scholar who became a friend, pupil, and colleague of *Lefèvre d'Étaples in Paris, Clichtove was a member of the French circle of devout 'Christian humanists' who felt an initial attraction for the ideas of Erasmus and the reformers. Clichtove later disengaged himself from the Protestant camp, editing the Sorbonne's *Determinatio* against Luther (1521) and writing a series of anti-Lutheran treatises between 1524 and 1533.

CONSTANTINE THE GREAT (ca. 280 – 337), Roman emperor. He embraced Christianity and made it the religion of the empire, fixing his capital in Byzantium, renamed 'Constantinople' in 330. The *Donation of Constantine* purported to be a charter conferring dominion with wide temporal rights over Italy and the western empire upon Pope Sylvester I. It became a key text in the assertion of papal plenitude of power, especially against imperial rights in the *Regnum Italicum*. The Donation was proved to be a forgery (produced in the Roman curia ca. 750 – 800) by the humanist Lorenzo Valla and other scholars in the 1440s, a demonstration seized upon with eagerness by *Luther and others in the early sixteenth century (Tierney 1988: 16 – 19, 21 – 2; Skinner 1978: I. 202 – 3,

206). Vitoria expresses doubts on the Donation's authenticity in *I On the Power of the Church* 5. 1.

CYPRIAN, ST (d. 258), bishop of Carthage. His popular treatise on episcopacy, *De catholicae ecclesiae unitate* (a controversy with the schismatic Novatian concerning the re-baptism of Christians who had lapsed during the Decian persecutions), was first printed in Rome 1471, and later edited by Erasmus (Basle, 1521). An important passage was incorporated in the *Decretum as Dominus loquitur*, C. 24. 1. 18 (see the Glossary).

D'AILLY, PIERRE (*Petrus de Alliaco*, 1350–1420), cardinal. Parisian nominalist and follower of *Ockham, author of a commentary on *Peter Lombard's *Sentences* and numerous scientific and philosophical treatises which were often printed together with those of his pupil and colleague *Gerson. At the Council of Constance he supported the conciliarist position (maintaining that bishops and priests received their jurisdiction immediately from Christ, not mediately through the pope), and wrote a treatise *Super reformatione ecclesiae* which influenced later Protestant reformers. D'Ailly held the voluntarist opinion that sin was not inherently evil, but sinful only because God willed it so; his *Quaestio de legitimo dominio* denied that natural *dominium* depends on grace, defining it as 'nothing other than the *iur* or dispositional power of using something in accordance with the law of nature', that is a natural right of property (Tuck 1979: 28–9).

DIONYSIUS THE PSEUDO-AREOPAGITE. The sixth-century Neo-Platonist collection known as the *Pseudo-Dionysian Corpus*, which exercised such deep influence on Christian thought, was attributed in the Middle Ages to Dionysius the Areopagite, the Athenian converted by St Paul in Acts 17: 34, hence acquiring 'apostolic' authority; Vitoria calls Pseudo-Denys 'disciple and contemporary of the apostles' (*II On the Power of the Church* 5. 3). This identification was challenged in Vitoria's day, even by Catholic and Dominican scholars such as *Cajetan, but was not finally laid to rest until modern times. The works important for political thought were the two tracts *On the Celestial Hierarchy* and *On the Ecclesiastical Hierarchy*, their backbone being the theocratic 'descending theme' of government as a pyramid with God at its apex.

DUNS SCOTUS, OFM (Doctor subtilis, ca. 1265–1308). Theologian whose teaching combined elements of Augustinianism and Aristotelianism. Against *Aquinas, he held that natural law depends wholly on the will of God, not on His intellect; but he concurred with the Angelic

Doctor in asserting that revelation does not contradict reason. Scotism became the doctrinal basis of Franciscan theology.

DURANDUS OF ST-POURÇAIN, OP (*Durandus de Sancto Porciano*, Doctor modernus, 1270/5 – 1334). Theologian who, despite being a Dominican, was often closer to nominalism than to *Aquinas (his works in fact became the set text, along with those of Gregory of Rimini, of the important nominalist chairs of theology at Alcalá and Salamanca in the first half of the sixteenth century, until they were replaced by those of *Biel). He attempted in his *De origine iurisdictionis* or *De iurisdictione ecclesiastica* (1329; printed in Paris in 1506 with works by *Hervé Nédellec and *Pierre de la Palu) to refute the imperialist claims of *Marsiglio of Padua and *Ockham.

EIMERIC, NICHOLAS, OP (1320–99), Inquisitor General of Aragon. Official theologian of the Avignon popes and a staunch upholder of theocratic power, he was the author of a celebrated treatise on the office of the inquisitor, *Directorium inquisitorum* (1376), much reprinted in the sixteenth century.

FISHER, JOHN (*Roffensis*, 1469–1535), bishop of Rochester, cardinal. Chancellor of Cambridge University, humanist and friend of More and Erasmus, Fisher was executed by Henry VIII for his protests at the divorce of Catherine of Aragon and refusal to accept the Act of Succession. He strongly defended the doctrine of the Real Presence and wrote *Sacri sacerdotii defensio contra Lutherum* (1525) against *Luther's doctrine of the priesthood of all believers.

FITZRALPH, RICHARD (*Armachanus*, ca. 1295–1360), archbishop of Armagh. In *De paupertate saluatoris*, a statement of the secular argument against Franciscan apostolic poverty written ca. 1350, Fitzralph argued that God's *dominium* is 'his full *ius* of possessing the world', to which He admits man a share of *dominium* out of His grace; hence only those who enjoy His grace share His dominion (Tuck 1979: 24–5), a view which strongly influenced *Wycliff. Fitzralph also penned a controversy against the Greek and Armenian doctrines, *Summa in quaestionibus Armenorum* (publ. Paris, 1511).

GERSON, JEAN (Doctor Christianissimus, 1363–1429). Nominalist theologian and reformer, pupil of *D'Ailly, he became chancellor of Paris University, and played an important role at the Council of Constance, where he supported the cause of the conciliarists (*De potestate ecclesiae*)

and the denunciation of Hussitism (*De unitate ecclesiae*). His voluminous writings include a large number of spiritual and mystical treatises, among which *De uita spirituali animae* (1402), written partly with D'Ailly, contained an important development of *Fitzralph and *Ockham's active rights theory (Tuck 1979: 25–31).

GRATIAN (d. before 1179). Bolognese jurist, author of *Concordia discordantium canonum* (ca. 1250), a vast compilation of patristic, conciliar, and papal texts arranged systematically in *distinctiones* and *causae*, which, under the name *Decretum Gratiani*, became the foundation of canon law.

GREGORY I THE GREAT, ST (pope 590–604), one of the four doctors of the Latin Church. The founder of the medieval papacy, Gregory was a copious author of exegetical, spiritual, and hagiographical works. His *Regula pastoralis* (ca. 591), a book of pastoral directives, became a standard textbook on the duties of the episcopate.

GUIDO DE BAYSIO (*Archidiaconus*, 1246/56–1313), archdeacon of Bologna. Canonist, author of an influential commentary on *Gratian's *Decretum* entitled *Rosarium*.

HADRIAN VI (Adriaan of Utrecht, 1459–1523), pope 1522–3. Tutor of *Charles V, and from 1517 bishop of Tortosa, Cardinal-Inquisitor of Aragon-Navarre, Regent of Castile, Adrian became virtual ruler of Spain. Trained by the Brethren of the Common Life at Deventer, he was also a reformer, and considerable theologian, publishing a commentary on *Peter Lombard's *Sentences* (1516) and *Quodlibets* (1515).

HENRY OF GHENT (*Gandauensis*, Doctor solemnus, ca. 1200–93). Augustinian theologian, in his *Quodlibets* and an unfinished *ST* he tried to steer a line between Scotism and Thomism.

HERVÉ NÉDELLEC or NOEL, OP (*Heruaeus Natalis*, ca. 1260–1323), general of the Dominicans. A Thomist 'who yet refused to accept Thomas' principles' (Ullmann 1975: 286), his *De potestate ecclesiastica papali* (1318), a hierocratic treatise occasioned by John XXII's conflict with Louis of Bavaria chiefly aimed against episcopatism, was published in Paris with *Durandus of St Pourçain's *De iurisdictione ecclesiastica* and *Pierre de la Palu's *De causa immediata ecclesiasticae potestatis*.

HOSTIENSIS (Henricus de Segusio, Enrico Bartolomei, ca. 1200–71), cardinal of Ostia. One of the most authoritative decretalists of the Middle Ages, Hostiensis upheld the most extreme theocratic doctrines of papal plenitude of power, asserting that the only justification for civil power was to wield the 'material sword' of justice at the behest of the spiritual power. He denied that unbelievers could have dominion, holding that they were obliged to recognize the universal jurisdiction of the pope (see the Glossary, s.v. *Quod super his*; Tierney 1988: 152, 156–7).

HUGH OF ST VICTOR (ca. 1096–1141), prior of St-Victor in Paris. Monk, mystic, and Platonist theologian influenced by *Augustine and *Dionysius the Ps.-Areopagite. In a much-quoted passage of his principal work, *De sacramentis Christianae fidei* (ca. 1134), a mystical exposition of pantheistic theology written during the Investiture contest, Hugh asserted that civil power was instituted by the ecclesiastical authority, though also stressing the division between the spiritual and temporal lives (Tierney 1988: 94–5; Ullmann 1975: 254–5).

HUGUCCIO OF PISA (d. 1210), bishop of Ferrara. The most prolific of the twelfth-century Bolognese decretists, Huguccio maintained a strongly dualist view of power, asserting that the pope's jurisdiction was strictly limited to spirituals (see the Glossary, s.v. *Cum ad uerum*).

IGNATIUS, ST (ca. 35–ca. 107). Successor of St Peter as bishop of Antioch and martyr, to whom is attributed a collection of eleven *Epistles*. Seven of these are now believed to be genuine, though interpolated; because of their strong emphasis on episcopacy, however, their authenticity has been strenuously denied by Protestant scholars, and as strenuously defended by Catholics, ever since their publication in the Latin translation of 1498 by Jacques *Lefèvre d'Étaples.

INNOCENT III (Lotario de' Segni, pope 1198–1216). An exceptional ruler, Innocent held a strongly theocratic view of the plenitude of power of the 'Vicar of Christ' (a title he made current) as 'below God but above man'. However, in a vital series of decretals he restricted this supremacy to spirituals, limiting the papacy's power in temporals to cases where moral issues were involved (see the Glossary, s.v. *Nouit, Per uenerabilem, Solitae, and Venerabilem*; and Tierney 1988: 127–38).

INNOCENT IV (Sinibaldo Fieschi, pope 1243–54). A brilliant canonist, Innocent developed the theocratic doctrines of his great predecessor *Innocent III. In his influential *Apparatus* on the *Liber Extra* Innocent

made an important contribution to theories of legitimate authority and dominion, particularly in his assertion that infidels could exercise dominion because all rational creatures were God's children and had a need for government, a theory which 'suggests that Innocent had extracted from his study of Roman jurisprudence a natural law theory of the state that is commonly encountered only a little later on after the assimilation of Aristotelian political ideas into Western thought' (Tierney 1988: 150–6, and see the Glossary, s.v. *Quod super his*).

ISIDORE OF SEVILLE, ST (*Isidorus Hispalensis*, ca. 560–636), archbishop of Seville. His most influential work, *Etymologiae*, is an encyclopaedic compilation from ancient sources arranged as a dictionary on every branch of knowledge practised in his time.

JEROME, ST (ca. 342–420), one of the four doctors of the Latin Church. Author of numerous apologetic and controversial works, Jerome was an unsurpassed scholar; his major achievement was his translation of the Bible from the original languages, which formed the basis of the Catholic Church's Vulgate text.

JOHANNES ANDREAE (ca. 1270–1348). Bolognese decretalist known in the Middle Ages as 'the fount and trumpet of the canon law', a pupil of *Guido de Baysio, Johannes Andreae's commentaries on *Liber Extra* and *Sext* were an authoritative source.

JOHANNES TEUTONICUS (d. 1246). Bolognese canonist, author of the *Glossa ordinaria* on *Gratian's *Decretum*, and a strong upholder of (German) imperial sovereignty.

JOHN 'QUIDORT' OF PARIS, OP (*Parisiensis*, d. 1306). Thomist theologian, whose immensely influential *De potestate regia et papali*, written in support of the French denunciation of *Boniface VIII, with its subtle application of corporate notions to the question of the relative powers of pope and general council and formidable use of Aristotelian arguments against papal supremacy, 'marked a turning-point in the development of ecclesiological theory' and paved the way for conciliarism (Tierney, 1955: 157–78). John's influence on his fellow-Dominican Vitoria is pervasive, but the only direct reference to him is *II On the Power of the Church* 1. 1 ad 3.

JOSEPHUS, FLAVIUS (37–ca. 100), Jewish historian. His *Jewish Antiquities* (a survey of the history of the Jewish people), *Jewish War* (on the

Roman conquest of 66–73), and *Against Apion* (a defence of Judaism), written in Greek, were for centuries the chief sources for Christian writers on the history and practices of Judaism.

LACTANTIUS (ca. 240–ca. 320), Christian apologist. His treatise *On the Handiwork of God*, a major source of *On Civil Power* 1. 1, seeks to prove the existence of a benign and provident creator from the beauty and ‘commodity’ of human anatomy; this was a variant of the Stoic ‘argument from design’ originally employed to refute Epicurean atomism, which attributed creation to chance. *De opificio dei* enjoyed a considerable vogue in the Renaissance: it was the first book to be printed in Italy, under the patronage of Cardinal Juan de *Torquemada at Subiaco by Sweynheim & Pannartz in 1465, and was printed several times more in the fifteenth century, as well as by Aldus in 1515. In the same year as Vitoria delivered *On Civil Power*, Erasmus issued a further edition (Basle: Froben, 1529).

LEFEVRE D'ÉTAPLES, JACQUES (*Jacobus Faber Stapulensis*, ca. 1455–1536). Leading French humanist, Aristotelian, and Biblical scholar, librarian of St Germain-des-Prés, Lefèvre was drawn to the reformers' ideas; he published a critical commentary on the Pauline Epistles in 1512 and two essays on St Mary Magdalene (1517–18) which led to a formal condemnation of heresy by the Sorbonne in 1521. Lefèvre subsequently printed a French translation of the Scriptures (1523–8), and was exiled to Strasburg for his reformist sympathies, though he never embraced Protestant doctrines on justification, and remained close to Erasmus in attitude.

LUTHER, MARTIN (1483–1546). Luther's discussion of the priesthood of all believers (see the Glossary, s.v.) was set out most famously in the ‘Reformation Treatises’ *To the Christian Nobility of the German Nation* and *The Babylonian Captivity of the Church* (1520). In II *On the Power of the Church* 2, however, Vitoria cites one of the lesser polemical pamphlets composed in hiding in the Wartburg, *De abroganda missa priuata*, a tract calling upon the Elector Frederick of Saxony to abolish privately endowed masses for the dead.

MARSIGLIO OF PADUA (ca. 1275–1342). Marsiglio's savagely anti-papalist treatise *Defensor pacis* (1324) asserted the complete subordination of ecclesiastical to temporal authority, and denied that the Church had any inherent jurisdiction, arguing that all sacerdotal privileges are granted by the temporal power of the *uniuersitas ciuium* and may be

withdrawn by it at will. In effect, Marsiglio declared the Thomist thesis that God is the author of nature to be an axiom of faith, and hence beyond the purview of theory; 'he therefore with one stroke achieved a tidy dichotomy of the natural and supernatural. In matters of the human state only natural things counted . . . the voluntarism of Marsiglio's system marked the breakthrough to a fully-fledged political science that rested on its own norms and axioms and the insight and judgment of the citizens' (Ullmann 1975: 282–3). Pope John XXII anathematized five propositions of Marsiglio's work, and excommunicated its author and John of Jandun, by the constitution *Licet iuxta doctrinam* of 1327 (Denzinger 1911: 213). *Defensor pacis* was placed on the Index in 1559.

MAZZOLINI DA PRIERO, SILVESTRO, OP (*Sylvester Prierias*, ca. 1460–1523), Master of the Sacred Palace. In his influential alphabetical *Summa Sylvestrina* (1515), Mazzolini's discussion of *dominium* and *ius* showed affinities with *Gerson's active rights theory (Tuck 1979: 5–31, 49).

MELCHIZEDEK. King of Salem and 'priest of the most high God' (Gen: 14: 18). Christian commentators inferred from the fact that Gen. 14 says nothing about the genealogy of Melchizedek that he was a *figura* or type of the Son of God ('without father, without mother, without descent, having neither beginning of days, nor end of life', Heb. 7: 3), and further took him as type of priesthood under the New Law according to Ps. 110: 4, where the Messiah is styled 'a priest for ever after the order of Melchizedek' (*Augustine, *De doctrina Christiana* 4. 21, quoting *Cyprian, *Epp.* 63). Jewish scholars, however, identified him as Noah's eldest son Shem, a tradition known also to *Aquinas (*ST* III. 22. 6). St Paul interprets the 'succession of Melchizedek' in his Epistle to Hebrews as indicating Christ's New Law, contrasting it with the Old Law of the 'succession of *Aaron' and the Levites.

NICHOLAS OF LYRE, OFM (ca. 1270–1340). Biblical exegete, whose *Postillae perpetuae in universam S. Scripturam* established the authoritative 'literal' way of exegesis. The postils were frequently printed as part of the *Glossa ordinaria* (see the Glossary, s.v.).

NIMROD. The Biblical passage which describes how, after the Flood, Nimrod son of Cush 'began to be a mighty one in the earth; he was a mighty hunter before the LORD, . . . and the beginning of his kingdom was Babel' (Gen. 10: 8–10), was traditionally interpreted as meaning that he was the first ruler to create an empire by seizing violently on the

rights of other lords, and the first to build a city, Babylon. In this sense he could be said to be the author and first founder of monarchy (see Pagden 1986: 70, n. 69). The idea is present in *Isidore, *Etymologiae* XV. 1. 4, enshrined in *Gratian's *Decretum* D. 6. d.p.c. 3 ('*coepit Nemroth esse robustus uenator coram Domino, id est hominum oppressor et exstinctor*'), and repeated by countless later writers down to the seventeenth century.

OCKHAM, WILLIAM OF, OFM (*Occam*, ca. 1285–1349). The principal advocate of nominalism. Although, in his commentary on *Peter Lombard's *Sentences*, Ockham considerably developed *Duns Scotus' voluntarism, even declaring that God could command hatred of Himself if He so willed, he did not altogether abandon the concept of 'natural' law. After his condemnation by John XXII in 1328 for his defence of the Spiritual Franciscans' theory of apostolic poverty, Ockham wrote a series of anti-theocratic works, notably *Breuiiloquium de potestate papae* and the gigantic *Dialogus de imperio et pontificia potestate* (1342–3), which contained an important discussion of the varieties of natural law.

PALACIOS RUBIOS, JUAN LÓPEZ DE (Johannes Lupidis ab Aula Flaua, d. 1525), civil lawyer and author of a commentary on *Aristotle's *Politics*. As the most prominent jurist of his day, and member of the Council of Castile, Palacios Rubios wrote Latin briefs justifying the policy of the Catholic Monarchs in several areas: defending the crown's *Patronato real* over ecclesiastical property, providing title for Ferdinand II's annexation of Navarre, and drafting the major legislative enactment of the reign, the Laws of Toro (1505). After the inconclusive *junta* of Burgos provoked by Fray Ambrosio de Montesinos' denunciation of the *encomienda*, Palacios Rubios was engaged to draft the *requerimiento* (see the Glossary, s.v.) on the basis of his own brief, *De insulis Oceani* of 1511–12 (Pagden 1986: 50–6).

PAUL OF BURGOS (Sh'lomo Halevi/Pablo de Santa María, *Paulus Burgensis*, 1350–1435). Talmudist and chief rabbi of Burgos, Halevi converted to Christianity (1391) and was later elected bishop of the same city. He wrote in Hebrew and Spanish as well as Latin, his major works being a controversial *Scrutinium Scripturarum*, which sought to prove to his former co-religionists that Jesus was the Messiah of Old Testament prophecy, and his *Additiones in Postillam* *Nicolai de Lyra, in which he brought to bear his profound knowledge of Hebrew and of Talmudic *midrash*. Both were regularly printed during the sixteenth century, the latter as part of the *Glossa ordinaria* on the Bible.

PELAGIUS (fl. 400–20), British lay monk and heresiarch. He taught the complete freedom of the will, and consequently rejected the doctrine of original sin and, with it, the necessity for Grace (*De libero arbitrio*, 416). Pelagius' doctrine was vigorously combated by *Augustine and *Jerome, and condemned by XVI Council of Carthage in 418 (Denzinger 1911: 47–50, §§101–8). Pelagianism was revived in Reformation debates about justification (Oberman 1981: 64–110).

PETER LOMBARD (*Magister Sententiarum*, ca. 1095–1160). Theologian at Paris, author of the *Sentences* (*Sententiarum libri IV*, 1148–50), the standard medieval textbook of Catholic theology. It consists of four books on, respectively, the Trinity, Creation and Sin, the Incarnation and the Virtues, and the Sacraments and Four Last Things. Lombard's was supposed to be the text on which the Prime Professor of Theology at Salamanca delivered his daily lectures, though Vitoria introduced the custom of substituting *Aquinas' *ST* for large parts of the course.

PIERRE DE LA PALU, OP (*Paludanus*, titular Patriarch of Jerusalem, 1270/80–1342). His strongly theocratic *De causa immediata ecclesiasticae potestatis* (ca. 1329) on the question of whether plenitude of power resides with the pope or the *congregatio fidelium* (J. G. Sikes, *English Historical Review* 49 (1934): 219ff) was published at Paris in 1506, along with works by *Hervé Nédellec and *Durandus of St-Pourçain.

RAYMOND OF PEÑAFORT, ST, OP (ca. 1175–1275), General of the Dominicans. A friend of *Aquinas, Raymond was commissioned by Gregory IX to compile the first official collection of decretals, the *Liber Extra* (promulgated 1234). He also wrote an important handbook on confession, *Summa de poenitentia, siue casuum* (1238).

RICHARD OF MIDDLETON, OFM (*Ricardus de Mediavilla*, d. ca. 1305). Scholastic theologian at Oxford and Paris, author of an important commentary on *Peter Lombard's *Sentences* (1285) which showed an early adherence to Thomism, and of a collection of *Quodlibets*.

SOTO, DOMINGO DE, OP (1494–1560). Dominican theologian and jurist, Vitoria's star-pupil, Soto was later appointed confessor to *Charles V, and Spanish delegate at the Council of Trent. His *De iustitia et iure*, which summarized much of Vitoria's teaching, was probably the most influential treatise on jurisprudence written during the sixteenth century.

SUÁREZ, FRANCISCO, SJ (Doctor eximius, 1548–1617). Jesuit theologian, metaphysician, and jurist, Suárez was the last, and possibly the greatest, representative of the ‘School of Salamanca’. His monumental *Tractatus de legibus et deo legislatore* (1612) was the most powerful and widely read treatise on natural law written during this period. Its influence can be seen in the writings of Grotius, Pufendorf, Descartes, and Locke among others, while Leibnitz claimed that he read a passage from it every night ‘with as much pleasure as a romance’.

SUMMENHART, CONRAD (1465–1511), professor of theology at Tübingen. His *Septipertitum opus de contractibus* (published in 1515) made a ‘massive’ contribution to natural rights theory, by ‘converting the claim-right theory of the twelfth century completely into an active right theory, in which to have any kind of right was to be a *dominus*, to have sovereignty over that bit of one’s world’ (Tuck 1979: 27–31).

TERTULLIAN (ca. 160–ca. 220), Church Father. Author of a number of apologetic and controversial treatises, among which were *De praescriptione haereticorum*, a polemic on the authority of Bible which asserted that the true tradition had been committed to the Church by the apostles, and hence denied heretics the right to propose alternative interpretations; and *De corona* (ca. 211), in praise of a Christian soldier for disobeying his commander, which presented a number of pacifist arguments later used in the Just War debate.

TORQUEMADA, JUAN DE, OP (*Johannes a Turrecremata*, 1388–1468), cardinal of St Sixtus. Canonist and papal theologian at Council of Basle 1433, author of a commentary on ‘Gratian’s *Decretum*. His voluminous *Summa de ecclesia* (publ. 1489), which seems to have exerted a decisive influence on Vitoria’s ecclesiology, strongly defended papal monarchy, infallibility, and universal plenitude of spiritual power, but denied the pope’s supremacy in temporals except *ex consequenti*, ‘insofar as it is necessary for the upholding of spiritual ends’.

TOSTADO, ALFONSO DE MADRIGAL EL (*Tostatus* or *Abulensis*, ca. 1400–55), bishop of Ávila. Son of a ploughman (hence the nickname *Tostado*, which means ‘sunburnt’), Madrigal rose by intellectual brilliance and a phenomenal memory to be professor of theology and philosophy at Salamanca, and a jurist of note. Proverbially the most prolific writer Spain has ever produced, the thirty posthumous folio volumes of his *Opera omnia* included works on every known branch of contemporary knowledge, from grammar and classical studies, astrology,

and natural philosophy to Biblical exegesis and theology (including treatises on politics, *De optima politia* and a relection on Plato's *Republic*). Vitoria frequently refers to his vast literal exposition of Genesis.

TRIONFO, AGOSTINO, OESA (*Anconitanus*, ca. 1270–1328). Trionfo's *Summa de potestate ecclesiastica* provided an influential synthesis of medieval political theory much quarried by later writers; though somewhat chaotic, it took a fundamentally theocratic line on papal sovereignty (M. Wilks, *The Problem of Sovereignty in the Later Middle Ages: The Papal Monarchy with Augustinus Triumphus and the Publicists*, Cambridge: Cambridge University Press, 1963).

TUDESCHIS, NICOLAUS DE, OSB (Niccolò de' Tudeschi, *Panormitanus*, 1386–1445), archbishop of Palermo and canonist. A pupil of *Zabarella, he wrote influential commentaries on the *Liber Extra*, *Sext*, and *Clementines*; during the Council of Basle he defended the conciliarist position.

WYCLIFF, JOHN (ca. 1329–84). An opponent of the nominalism of *Duns Scotus and *Ockham, his two treatises on dominion (*De dominio diuino*, *De dominio ciuili*) argued that lordship depends on grace. Forty-five articles from his works were condemned as heretical by the Council of Constance in 1415 for having inspired the Lollard and Hussite heresies (Denzinger 1911: 224–7, §581–625), and his bones ordered to be exhumed and burned; many of his ideas, and his violent censures of the pope as Antichrist, resurfaced in the doctrines of the Reformers.

ZABARELLA, FRANCESCO (*Cardinalis*, 1360–1417), cardinal. One of the foremost decretalists of the fifteenth century, referred to by Vitoria simply as 'the Cardinal', his proposals for ending the Great Schism at the Council of Constance included urging his erstwhile patron John XXIII to abdicate; they were later placed on the Index for their advocacy of conciliarism.

Glossary

The following notes aim to explain a handful of old Spanish terms and institutions which may be unfamiliar; a number of Latin scholastic and legal technical concepts; and, above all, the classic canons cited by Vitoria from the Corpus iuris canonici. The mere mention of the first words of these better-known canons was sufficient to locate a particular argument in its juristic context for a sixteenth-century audience. The Glossary does not, however, include major concepts and terms already discussed in our Introduction, such as the varieties of law ('divine', 'natural', 'of nations', and 'positive'), nor such standard Renaissance political concepts as res publica, princeps, or ius. Fuller discussions of the latter and of the scholastic and canonistic terms can be found in the items by Brundage, Muldoon, Pagden (especially 1981a and 1987), Skinner, Tierney, Tuck and Ullmann in the List of references.

alcabalas (gabellae). The Spanish crown's most important source of income in the late medieval and early modern period was the *alcabala* or sales tax. Established in the Ordinance of Burgos of 1338 by Alfonso XI and first raised as a general royal tax in 1342, these gabelles were not restricted to taxes on the distribution of salt, as in France and other countries (the salt mines were not incorporated into the royal domain until after Vitoria's death), but were levied on all sales; their importance lay in the fact that the consent of the realm in Cortes was not required.

Alius (C. 15. 6. 3). This canon quotes a passage of Pope Gregory VII's justification of his excommunication of Henry IV (1076). Its citation of Pope Zacharias' deposition of King Childeric in 751 (texts in Tierney 1988: 16–21, 66–73, 121) as a precedent became a standard text in debates on papal temporal authority: interpretation hinged on the word *deposuit*, theocratic decretists arguing that it meant that Zacharias had 'deposed' Childeric by his own authority (*Glossa ordinaria, ad loc.*

§deposuit, adducing D. 96. 10), while publicists argued that the determining factor in the change of dynasty had been the Franks' election, and that the pope's role had been merely consultative. This latter seems to be the view taken by Vitoria in *I On the Power of the Church* 5. 9 and *On the American Indians* 3. 6 (Muldoon 1968: 277).

ambitio. Vitoria uses this word (in the old Roman sense of 'electoral canvassing', hence 'bribery' – certainly not in Machiavelli's sense: see R. Price, '*Ambizione* in Machiavelli's Thought', *History of Political Thought* 3 (1982): 382–445) to describe some form of corruption in the purchase of public office in *On Civil Power* 3. 1 §16. There was little discussion of public venality in medieval political theory, despite the Church's extensive provisions against its ecclesiastical equivalent, simony (see, for example, *ST* II-II. 100); the concept of *corruption* was introduced into political vocabulary by the humanists, but only in the Stoic sense of 'decay' arising from *avaritia*, the lust for wealth, and an accompanying loss of civic responsibility (Skinner 1978: I. 43–4, 83–4, 149–50, 162–8, 178–80, 222–3). It is not clear what Vitoria had in mind in describing the purchase of public offices as a crime against human positive law.

Bulls of Donation. Three bulls granted to the Catholic Monarchs (*q.v.*) by Alexander VI in 1493 which, 'by the authority of Omnipotent God granted to us in blessed Peter and the vicarship of Christ which we hold on earth' purported to donate to them all the lands, rights, and jurisdictions west of the Line of Demarcation, a meridian drawn 100 leagues west of the Azores, for the purpose of evangelizing the inhabitants. Based on the 'just war' and papal monarchist theories of Hostiensis and other canonists, the bulls were taken by crown apologists as establishing Spanish dominion in the Indies, a conviction enshrined in the *requerimiento* (*q.v.*). See L. Weckmann, *Las bulas alejandrinas de 1493 y la teoría política del papado medieval: Estudio sobre la supremacía papal sobre islas 1091–1493* (Mexico, 1949), and F. Mateos, 'Bulas portuguesas y españolas sobre descubrimientos geográficos', *Missionalia Hispanica* 19 (1962): 5–34, 129–68.

Catholic Monarchs. This title was bestowed upon Isabella I of Castile (1474–1504) and Ferdinand II of Aragon (1479–1516) by the latter's cousin Pope Alexander VI in 1494 in official recognition of their conquest of the Moorish kingdom of Granada (1492).

claves ecclesiae. The famous passage on the 'keys of the kingdom of heaven' in Matt. 16: 18–19 forms the *thema* of *I On the Power of the Church*. The Keys were interpreted by theologians and canonists before Gratian as (a) the key of knowledge (*clavis scienciae*) and (b) the key of power (*clavis potestatis*); both were identified with the sacramental power (*potestas ordinis, q.v.*) of 'binding and loosing'. Gratian and his successors, on the other hand, proposed that one key was sacramental power while the other was jurisdictional power (see the entry *Omne quod in pacis* below, and Tierney 1955: 30–6). The latter is also Vitoria's interpretation in *I On the Power of the Church* 2. 2 and 4. 7, following Peter Lombard's *Sentences* IV. 18.

composición. In the Letter to Arcos (Appendix A, pp. 331–3) Vitoria uses the term 'compounding' as it was commonly understood in the sixteenth and seventeenth centuries, to refer to the payment of lump sums to government for the repossession of confiscated estates (to 'compound' is to settle a matter by a money payment in lieu of other liability). After the massacre of Cajamarca, several Spanish *conquistadores* sought to compound their usurped titles for a purely nominal payment of this kind to the royal treasury, and appealed to the papacy in their negotiations (Pidal 1958: 30–1). Vitoria took the view that this composition was fraudulent; he implies that the Crown, in accepting the payment, would be 'compounding a felony' (forbearing to prosecute for a consideration), which is an offence in law.

concilium generale. The conciliarist movement, which arose during the Papal Schism, sought to prove that the authority of a duly-convoked 'General Council of the Church' (that is, from 1215 to 1511, one which included secular princes, abbots and provosts as well as the prelacy) was superior to that of the pope because original power in the Church was located in the *congregatio fidelium (q.v.)*, which the council 'represented'. Conciliarism drew on Marsiglio of Padua's view of the people's sovereignty, Zabarella's corporation thesis, and Bartolus' view of the people's legislative faculty, invoking the Roman precept *Quod omnes tangit*, 'what concerns all, all have a right to judge' (Tierney 1955: 4, 149–53; Ullmann 1975: 156–9). These ideas were effective in the so-called 'Reform' Councils of Constance, Basle, and Florence in the fifteenth century, which all opened their decrees with the statement *Uniuersalem ecclesiam repraesentans*. However, Pius II's bull *Execrabilis* (1459) forbade appeals to the council; and V Lateran (1511) decreed that there should be no further 'General Councils'. Thereafter, only the prelacy took part in the Councils.

congregatio fidelium. The definition of the Church as the ‘congregation of the faithful’ or corporate aggregate of Christian believers was developed by fifteenth-century conciliarists such as *Zabarella, in X. 1. 1. 1: ‘ecclesia nihil est aliud quam congregatio fidelium’ (Tierney 1955: 205). It incorporated two medieval ecclesiological ideas: ‘on the one hand the idea of the Church as a community of believers, a *societas perfecta* infused with the Holy Spirit and sustaining an unending corporate life; on the other hand, the idea of the Church as a system of clerical offices deriving their authority from above, from outside the community’ (Tierney 1955: 23–4). In *On the Power of the Church*, however, Vitoria uses the term in a specifically confessional sense, to mean the Roman Church excluding heretics (that is, Protestants).

contritio. In his writings on penance Luther argued that the Church had attenuated *contritio* to *attritio*; that is, it had substituted genuine remorse by mere regret arising from fear. Luther rejected such ‘attrition’ as a subterfuge, and demanded how any sinner could know whether his contrition was sufficiently contrite? This is the background to Vitoria’s discussion in *On the Power of the Church* 2. 3–4.

conversos. Jews who had accepted Christian baptism. Many did so in circumstances amounting to coercion or duress, in the wake of increasingly violent pogroms from 1391 and especially after the Crown’s decree expelling all unconverted Jews from Spain in 1492. The question of whether these *conversos* or ‘New Christians’ were genuine converts or secret Judaizers was the chief concern of the tribunal of the Spanish Inquisition, established with papal permission in 1478 and run, from 1483, by a royal Council (Elliott 1970: 105–10).

Corpus iuris canonici. The body of canon law was comprehensively codified by the end of the Middle Ages, first in the Bolognese jurist Gratian’s *Concordia discordantium canonum*, known as the *Decretum* (ca. 1142), and then in five collections of decretals: the five books of Gregory IX’s *Liber Extra* (edited by Raymond of Peñafort and promulgated in 1234), a sixth book added by Boniface VIII (*Liber Sextus*, 1298), and the *Extravagantes* of Clement V (1317), John XXII (1325), and Communes (to 1471). These collections were printed as a single collection from 1491 onwards, accompanied by their glosses (see *Glossa ordinaria*): see the modern edition in Richter & Friedberg 1922.

Corpus iuris ciuilis. The body of Roman law codified by Justinian (533–56) consisted, in Vitoria's time, of the Code (divided into *Codex*, books I–IX, and *Tres Libri*, books X–XII), three Digests (*Digestum Vetus*, *Infortiatum*, *Digestum Nouum*), the Institutions, and various novels (*Authenticum*). From 1468 to 1627 these collections were printed with the marginal *apparatus* of Accursius' *Glossa ordinaria*, generally in five folio volumes: see the modern edition by Krueger, Mommsen, Schoell & Kroll 1970–2.

corpus mysticum. The Pauline concept of the Church as a 'mystical body' (Rom. 12: 4–5, 1 Cor. 10: 16–17, 12: 12–27), central to conciliarist thought (Tierney 1955: 132–41), is used by Vitoria to prove that the Church, as a visible and jurisdictional body politic, needs at all times to be guided by its head. The metaphor is described by Skinner (1978: II, 146) as 'seductive and crucial'. The same argument was later taken up by papalist champions at Trent, and by Jesuit theorists such as Bellarmine.

Cum ad uerum (D. 96. 6). Huguccio's celebrated commentary on this canon (Tierney 1988: 122–3, with the text of the canon on 121–2, which in turn refers to a text by Pope Gelasius on 14–15) maintained the complete separation of the Two Swords, asserting that while the pope's plenitude of power was incontestable in spirituals, he could assume jurisdiction in temporals only when no established temporal authority was competent to act (Tierney 1954: 602–4). Huguccio further asserted that the emperor held his power 'not from the pope, but by election from the princes and people'.

Cum secundum leges (Sext 5. 2. 19). Boniface VIII's decretal stated that, since certain civil crimes were punishable by confiscation of property, the more serious crime of heresy must *ipso iure* attract the same penalty. It became one of the standard canonistic texts in discussions of infidel *dominium*, along with Hostiensis' and Innocent IV's commentaries on *Quod super his* (q.v.).

De Iudaeis (D. 45. 5). The canon quotes Statute 56 of the IV Council of Toledo (633, presided over by Isidore of Seville), which rebuked the Visigothic king Sisebut's policy of forcible baptism of Jews. The Council insisted that conversion must always be peaceful and voluntary, citing the verse 'Therefore hath he mercy on whom he will have mercy, and whom he will he hardeneth' (Rom. 9: 18). The statute concluded, however, that Jews who had already been converted by force should be

obliged to remain in the Church 'to avoid blasphemy and cheapening of the Faith'.

dominium. Roman law made a clear distinction between *possessio* (control of a thing, irrespective of whether the possessor has a right to it) and *dominium* (the right to a thing, irrespective of whether the owner has control of it). *Dominium* in this sense is correctly translated as 'ownership, property', from *dominus* 'owner, master'. In the language of natural jurisprudence used by Vitoria, *d. rerum* means a natural and inalienable right 'over not only men's private property, their goods (*bona*), but also over their actions, their liberty and even – with certain important qualifications – their own bodies' (Pagden 1987: 80–1; also Tuck 1979: 58–81). Vitoria's chief concern is to establish that *dominium* in this sense is grounded on natural law, not on grace (see the Introduction, pp. xvi, xxiv).

Dominus loquitur (C. 24. 1. 18). A text from Cyprian's *De catholicae ecclesiae unitate* much quoted in decretist discussions of papal sovereignty and the powers of Peter (the papacy) *vis à vis* the powers of the apostles (the episcopacy). According to Cyprian, Peter's unique position as Prince of the Apostles consisted in 'priority', the fact that Christ had first conferred upon him alone the powers which the other apostles received *after* the resurrection; this was interpreted as a sign that Christ had designated him as the centre of unity in the Church. Argument centred on the hotly-debated words *pari consortio* 'with the same equal share' in Cyprian's statement that 'the rest of the apostles received honour and power with the same equal share, but wished him [Peter] to be their prince'. The traditional interpretation was to invoke the distinction between the sacramental and jurisdictional powers; the sacramental power of binding and loosing had been conferred, it was argued, on all the apostles equally, but the jurisdictional power of administration had been given to Peter alone (see *II On the Power of the Church* 4. 2, n. 27; Tierney 1955: 33–4).

Duo sunt (D. 96. 10). Pope Gelasius's letter of 494 to Emperor Anastasius (Tierney 1988: 10–11, 13–14, with bibliography *ad loc.*) was quoted countless times in medieval debates on the relationship between *sacerdotium* and *regnum*. It appears to assign higher authority to the spiritual power, but makes a distinction between *auctoritas* (spiritual) and *potes-tas* (secular) which provided much fuel for debate.

Futuram (C. 12. 1. 15). A text from ps.-Isidore, *Decretum de primitiua ecclesia* attributed to Pope Miltiades (311–14), in which the pope acknowledged 'immense gifts' (among them the Lateran palace) from the Emperor Constantine the Great.

Glossa ordinaria in S. Scripturam. Known simply as 'the Gloss', this tremendous exegetical work of interlinear and marginal commentary on Holy Scripture (*Patrologia Latina*, ed. Migne, CXIII–IV) was attributed in medieval times to Walafrid Strabo, but is now thought to be a work of composite authorship assembled in the schools of Laon and Auxerre around Anselm of Laon (d. 1117). It was the standard text of scholastic Biblical scholarship, printed many times in the fifteenth and sixteenth centuries, generally with the *Postillae* of Nicholas of Lyre and *Additiones* of Paul of Burgos, in which form it occupies six folio volumes: see Beryl Smalley, *The Study of the Bible in the Middle Ages*, 2nd edition (Notre Dame, Ind.: Notre Dame University Press, 1964), pp. 46–66; and 'The Bible in the Medieval Schools', in G. W. H. Lampe (ed.), *The Cambridge History of the Bible, II: The West from the Fathers to the Reformation* (Cambridge: Cambridge University Press, 1969), pp. 197–220.

Glossa ordinaria in Corpus iuris ciuilis: see the Biographical notes, s.v. ACCURSIUS.

Glossa ordinaria in Decretales Gregorii IX. The *Apparatus* of Bernard of Parma (d. 1236), accepted by later decretalists as the canonical gloss on the *Liber Extra*.

Glossa ordinaria in Decretum. The standard gloss on Gratian's law-book, compiled ca. 1216 in Bologna by Johannes Teutonicus and revised in its definitive form by Bartholomaeus of Brescia ca. 1245.

Grandi (Sext 1. 8. 2). Innocent IV's legitimization of the action of the Portuguese nobles who stripped their incompetent king of his throne in 1245, the decretal became a standard text in the debate on plenitude of power.

Manichees. A gnostic religious sect of the third century known for their extreme dualism, which Augustine (who had himself been a Manichee before his conversion to Christianity) attempted to refute in his *De Genesi contra Manichaeos*.

mayorazgos (*primogeniturae*). In Castile, inalienable estates in fee tail limited to eldest sons (*mayores*), or entails; Vitoria identifies them as a form of Roman *fideicommissa* 'bequests in trust'. Though entail had been a central institution of Spanish land-tenure since 1369, the faculty to found such entails was considerably extended by the Catholic Monarchs in the Laws of Toro (drafted by Juan López de Palacios Rubios, promulgated 1505), a measure which attracted bitter criticism throughout the sixteenth century from moralists and political economists (with whom Vitoria sides in *On Law* §137, pp. 203–4). Opponents argued that entails encouraged idleness, and were unjust to younger children. Vitoria's confident prophecy of their imminent demise (p. 204) was premature, however, since the *mayorazgos* were not in fact abolished until the nineteenth century.

moriscos. Spanish Muslims ('Moors') who had accepted Christian baptism. The Muslims received guarantees concerning the use of their law and religion at the fall of the Nasrid kingdom of Granada in 1492; the Spanish Crown did not officially countenance forcible conversion, at this or any later time, either of Moors or Jews. In 1499, however, Cardinal Cisneros introduced a policy of mass baptism of Moors which amounted in effect to forcible conversion, and which immediately provoked the Rebellion of the Alpujarras. The result was a pragmatic of 1502 ordering the expulsion of all unconverted adult Moors (Elliott 1970: 51–3).

noui grammatici. Vitoria's term for the so-called 'Erasmian' humanists, scholars of the Revival of Antiquity in the fifteenth and early sixteenth centuries who argued that the ancient texts of Holy Scripture, Aristotle and the Fathers should be subjected to philological and historical scrutiny. Lorenzo Valla initiated the movement to retranslate the Scriptures from original sources, impugning the authority of the Vulg.; he was followed, most notably, by Erasmus. In political theory, the humanists drew on Cicero and Livy to support their so-called 'civic' or republican ideals of liberty and participation.

Nouit (X. 2. 1. 13). In this decretal Innocent III asserted the pope's right to mediate in a feudal dispute between King Philip of France and King John of England *ratione peccati*, 'on the grounds that it involved a question of sin'; the pope made it clear that he did not intervene 'on the temporal matter of the fief' (Tierney 1988: 134–5). The decretal was the subject of an important papalist commentary by Innocent IV (Tierney 1988: 153).

obligation. The question of 'obligation' was a central debate between Catholic and Lutheran theorists (Skinner 1979: II. *passim*, see the index s.v. *resistance to lawful authority*). Do all laws bind ('oblige') in conscience, or does the subject have the right to resist the ungodly laws of a prince for conscience's sake? The answer is connected to the question of whether *dominium* depends on grace (see the Introduction, p. xvi). In another sense, laws might be binding *ad culpam* 'in guilt', or *ad poenam* 'purely penal'. The latter debate, which arose from a phrase in the *Constitutions* of the Dominican Order stating that they were binding 'non ad culpam sed ad poenam' (A.H. Thomas, *De oudste constituties van de dominicanen: Voorgeschiedenis, tekst, bronnen, ontstaan en ontwikkeling (1215-1237) met uitgave van de tekst*, Leuven: Leuvense Universitaire Uitgeverij, 1965: 135-6), is discussed at length in *On Civil Power* 3. 1-3; see further Daniel 1968: 119-23.

Omne quod in pacis (D. 22. 1). The canon *Omne quod in pacis*, attributed to Pope Nicholas II but in fact taken from Peter Damian's commentary on the 'Keys' in Matt. 16: 19 (text, decretist glosses, and notes in Tierney 1988: 117-21) became the standard canonist text on the distinction between the *auctoritas* and *administratio* of the power of the Keys (see *claves ecclesiae* above). The point hinged on the interpretation of the word *coeleste*: Peter Damian intended only the familiar doctrine that sins forgiven by the apostles on earth would be forgiven 'in heaven', but the decretists interpreted him as establishing a distinction between the 'heavenly empire' of the clergy and the 'earthly empire' of the laity. In his gloss on *coeleste*, Johannes Teutonicus further introduced the influential allegory of the Two Swords of Luke 22: 38 (see *Swords of the Church* below): this had been developed by a line of writers from Gregory VII to Bernard as referring to the 'spiritual' and 'material' coercive powers of the papacy, but it now took on the quite different meaning of the division of spiritual and temporal powers between *sacerdotium* and *regnum*. In the latter sense it soon became a topic, reaching its most extreme formulation in the decretals of Innocent III and Boniface VIII's celebrated bull *Unam sanctam* (q.v.).

penance, poenitentia. Of the three parts of the sacrament of penance, contrition (q.v.), confession, and satisfaction, it was satisfaction, and specifically the question of indulgences, which first aroused Luther's opposition. Following his 'glowing discovery' that the Greek word *metanoete* in Matt. 3: 2 (Vulg. *poenitentiam agite* 'do penance') actually means 'repent', Luther concluded that satisfaction was against the gospel, and that all forms of penitential behaviour were 'works' irrele-

vant to righteousness; the sinner is justified through faith alone, or by gratuitously given grace. From this, it was a short step to conclude that absolution is merely a 'declaration' by man of what God has decreed in heaven, not a ratification by God of what man has ruled on earth. This in turn was to lay the axe to the roots of the sacramental and sacerdotal system on which the Catholic theocracy based its claim to be the sole mediator of salvation to men. Luther duly proceeded to assault the doctrine of the seven sacraments in one of his 'Reformation Treatises', *The Babylonish Captivity of the Church* (1520).

Per uenerabilem (X. 4. 17. 13). Innocent III's letter of 1202 on the legitimation of the bastards of Count William of Montpellier (Tierney 1988: 136–8) became one of the classic texts in the debate on the papal *plenitudo potestatis* (q.v.), advancing the papacy's claim to supreme *de iure* temporal appellate jurisdiction, but allowing the king *de facto* sovereignty in his own territory (Tierney 1962 and 1965; Hostiensis' commentary, Tierney 1988: 156–7).

plenitudo potestatis. 'Plenitude of power', an expression used to denote the papacy's universal and supreme power, and in particular its temporal jurisdiction.

potestas iurisdictionis. The 'jurisdictional power' of the Church; that is, the power inhering in the papacy, the pope's public authority to bind all the faithful by his judicial decisions, and specifically to excommunicate and to dispense.

potestas ordinis. The 'sacramental power' of the Church; that is, the priesthood's power to grant absolution and penance. Ordination (*ordo*) is specifically related to the question of ecclesiastical power in Peter Lombard's definition: '*Ordo est signaculum quoddam Ecclesiae per quod spiritualis potestas traditur ordinato*' (Sentences IV. 24. 13), and hence in the succeeding theological tradition (see for example *ST* Suppl. 34. 2). The debate on sacramental power assumed a central position in Reformation ecclesiology because of Luther's theology of penance (q.v.).

praescriptio. In Roman law 'prescription' is the right to convert possession into *dominium* (q.v.) by usucapion of one or two years, provided the possessor has acquired the property *bona fide* 'in good faith', not *ui clam precario* 'by force, stealth, or grant at will' (Gaius, *Inst.* 2. 40).

priesthood of all believers. Luther's doctrine of the universal priesthood of all believers was a logical outcome of his solfidianism; in defining the Church simply as the *congregatio fidelium* (q.v.), he denied the orthodox idea of an authorized hierarchy charged with mediating between God and the faithful. This doctrine in effect attacked the whole visible institution of the Roman Church (Skinner 1978: II. 10–19).

Princeps legibus solutus 'The sovereign is exempt from the law' (*Digest* I. 3. 31). The Roman law merely exempted the emperor from observance of certain rules; it was used by medieval glossators, however, to justify an apparent principle of absolutism. One counter-argument, first proposed in Accursius' *Glossa ordinaria* (in *Digest* I. 3. 31) on the basis of the *lex Digna* (*Codex* I. 14. 4), and incorporated into canon law in X. 1. 2. 6, was to say that the prince is *legibus solutus* only in the minimalist sense that there is no legal machinery to make him justiciable, according to the principle that 'no one can be compelled by himself' (*Digest* IV. 8. 51). Hence he is bound by the law only by his own will; nevertheless, Accursius argued, his will to be so bound is ensured, because the authority of the prince depends on the authority of the law (Tierney 1963).

Quodcumque (C. 24. 1. 6). One of the most important canons in the debate on papal *plenitudo potestatis* (q.v.). Augustine took Cyprian's view of the relation between Peter's successor and the Church (see *Dominus loquitur* above) one step further by suggesting, in the context of a commentary on John 12 (*Tractatus* 50), that when Peter received the keys with the words 'whatsoever ye shall loose' (Matt. 18: 18), he 'signified (*significavit*) the Church'. This was interpreted as meaning that he represented or 'stood in *figura ecclesiae*'; a notion which could be taken to mean either that his power was itself derived from the whole Church, or that the indefectible power of the Church was epitomized in his person and that of his successors (Tierney 1955: 34–5, and H. Grabowski, 'St Augustine and the Primacy of the Church of Rome', *Traditio* 4 (1946): 89–113).

Quod super his (X. 3. 34. 8). The decretal dealt with the oath taken by Crusaders, but the glossators took it as an opportunity to consider the morality of the Crusade in general, and in particular the right of Christians to seize the Holy Land from the Muslims. Innocent IV's commentary (Tierney 1988: 155–6) specifically denied that the Muslim refusal to accept the overlordship of the pope was a ground for depriving them of dominium, arguing instead that the proper title was the fact that the Muslims had unjustly taken the Holy Land from its lawful possessors,

the Christian Roman Empire (Muldoon 1968: 272–4). Aquinas' discussion of rapine was more equivocal: the goods of unbelievers could be taken from them if they were unjust possessors, but only by public authority.

relectio. The name given to special lectures devoted to 're-reading' a problem raised during the year's lectiones. The term more commonly used was repetitions, the lecturer being called in English a 'repeater'. At Salamanca relections were governed by a time limit of two hours; professors of each faculty were required to repeat by Midsummer's Eve each year (Beltrán de Heredia 1928: 123–6).

requerimiento. A juridical 'summons' drafted by the jurist Palacios Rubios in 1513 which outlined the Spanish claims to *dominium* in America (namely the papal Bulls of Donation, *q.v.*). The summons required the Amerindians to recognize the Holy Trinity and the legitimacy of the Spanish title, and threatened them with just war if they did not submit peacefully to the invaders. On the authority of Deut. 20: 10–14, every *conquistador* was required to read a copy of the *requerimiento* aloud to the Indians in the presence of a notary before attacking them: see L. Hanke, 'The *requerimiento* and its Interpreters', *Revista de Historia de América* 1 (1938): 25–34; S. Zavala, 'La doctrina del Dr. Palacios Rubios sobre la conquista de América', in his *'Utopía' de Tomás Moro en la Nueva España y otros estudios* (Mexico, 1937), pp. 31–43; and B. M. Biermann, 'Das Requerimiento in der spanischen Conquista', *Neue Zeitschrift für Missionswissenschaft* 6 (1970): 94–114.

Solitae (X. I. 33. 6). Innocent III's letter to Alexius of Constantinople of 1201 (Tierney 1988: 133) became one of the celebrated series of decretals (cf. *Novit, Per uenerabilem, Venerabilem*) used to assert a theocratic theory of papal world-monarchy. *Solitae* was especially important to the debate on the Two Swords, and for its metaphor of the sun and the moon (Tierney 1965: 232) developed by Hostiensis in his commentary (Tierney 1988: 157).

Sublimis Deus. The bull of Paul III (9 June 1537), secured by the Dominicans on their own authority, which refuted the claim that barbarians may be deprived of liberty or property on the grounds of incapacity to receive Christian baptism: see L. Hanke, 'Pope Paul III and the American Indians', *Harvard Theological Review* 30 (1937): 65–102; M. M. Martínez, 'Las Casas, Vitoria, y la bula *Sublimis Deus*', in *Estudios sobre F. Bartolomé de las Casas* (Seville, 1974), pp. 25–51.

Swords of the Church. The passage in Luke 22: 35–8 where the disciples offered Jesus two swords was interpreted as a symbol of the spiritual and temporal powers of the Church. The Swords became an influential – and ambivalent – metaphor in debates on *regnum-sacerdotium* (see the entries under *Cum ad uerum*, *Omne quod in pacis*, *Unam sanctam*).

Terra Firma (terra continens). The word ‘continent’ (*continens*) had a vaguer connotation than it does now, meaning any ‘continuous, connected land larger than an island’; it was glossed by a contemporary humanist, Antonio de Nebrija, as *tierra firme* in his *Vocabulario español-latino* (Salamanca, 1495). Vitoria uses it to mean the Spanish possessions in the American mainland, as opposed to the West Indies. See W. E. Washburn, ‘The Meaning of “Discovery” in the Fifteenth and Sixteenth Centuries’, *American Historical Review* 68 (1962–3): 1–21.

traditio. ‘Livery of seisin’, alienation by public and personal delivery of possession (usually, in Roman practice, by the handing over of a token before witnesses). In the hierocratic doctrine of papal power it was argued (for example in the canon *Si Petrus princeps*, C. 8. 1. 1) that Peter ‘handed over’ (*tradidit*) the powers given to him by Christ (Matt. 16: 18) by livery of seisin before the assembled Christian community in Rome, thereby instituting his heir Clement I by due legal form.

Unam sanctam (Extravag. Comm. 1. 8. 1). Boniface VIII’s bull of 1302 (Denzinger 1911: 205–6, §§468–9, transl. in Tierney 1988: 188–9) has been called the completest expression of the theory of the political omnipotence of the pope. It contains an important passage on the Two Swords, temporal and spiritual, both of which the bull asserts are *in potestate Ecclesiae*, the temporal sword ‘to be wielded by the arm of kings and knights, but at the nod of the priesthood’ and subordinated to the spiritual sword.

Venerabilem (X. 1. 6. 34). Innocent III’s letter of 1202 putting forward the papacy’s claim to decide between two rivals for the imperial throne (text in Tierney 1988: 133–4) became a standard text in the debate on *plenitudo potestatis* (q.v.). It attributed to the Holy See the authority for the transfer of empire from the Greeks to the Germans in the person of Charlemagne (Vitoria appears to confuse this historical reference in *On the Power of the Church* 5. 9 §19, attributing the consecration of Charles to Stephen II, and setting it in the reign of Constantine V; he was evidently thinking of the Donation of Pepin).

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